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IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDY LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners-Appellants,

-vs-

JAMES J. BOYLE, United States Marshal,

Respondent.

No.

TRANSCRIPT OF RECORD ON APPEAL

(LORETTA STARVUS STACK)

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Notice Of Appeal

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK

Petitioner,

v.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13456-BH.

PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Loretta Starvus Stack, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of her liberty, to produce the body of your petitioner, Loretta Starvus Stack before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 25, 1951, a warrant was issued by Howard V.

California, pursuant to a complaint charging your petitioner and one William Schneiderman, with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

On July 26, 1951, petitioner was unlawfully arrested by agents of the Federal Bureau of Investigation who produced no warrant for arrest and stated that they needed no warrant of arrest for your petitioner although your petitioner demanded the production of a warrant of arrest; that said agents declined to state the reasons for your petitioner's arrest or the existence of any charges against petitioner or the fact that a warrant had been issued, and thereupon forcibly took petitioner into custody.

III.

Following petitioner's arrest as aforesaid and on July 26, 1951, petitioner was arraigned before United States Commissioner Francis St. J. Fox in San Francisco and by said Commissioner was ordered to be held in custody upon bail fixed by said Commissioner in the sum of $2,500. Bail in the aforesaid sum was furnished and petitioner was released from her confinement in the United States Marshal's office.

IV.

Thereafter and on or about July 27, 1951, the United States Attorney for the Northern District of California made application to the Honorable Louis E. Goodman, a judge of the United States District Court for the Northern District of California for an increase in said bail. On said day the said District Judge modified the aforementioned order of the said Commissioner and did make his order fixing bail in the sum of $50,000. In fixing the said sum the District Judge ruled that the narrow question before him was the amount of bail which should be fixed pending removal

of said order of said Judge, petitioner was then confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

V.

Thereafter, on July 28, 1951, petitioner filed a petition for writ of habeas corpus to the said Honorable Louis E. Goodman, for a reduction of bail and the said Judge, basing his ruling on the record of proceedings of July 27, 1951, denied the petition.

VI.

Upon information and belief, the United States Attorney for the Southern District of California, summoned a Grand Jury to convene on July 31, 1951, at 9 A.M. and in the space of about fifteen minutes the said Grand Jury returned the indictment herein, charging your petitioner together with the above-mentioned defendants with a conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671.

VII.

On August 1, 1951, petitioner was removed from the County Jail of the City and County of San Francisco and brought to the County of Los Angeles where petitioner was confined in the County Jail of the County of Los Angeles under the custody of the United States Marshal James J. Boyle.

VIII.

Thereafter and on August 2, 1951, petitioner was taken before the Honorable James M. Carter, the judge of this Court before whom the indictment was returned. Upon information and belief, the true bill returned against the defendants contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were written

defendants except the defendant William Schneiderman, where the notation was $100,000, and that these writings were unsigned. Upon arraignment before the said Judge no further reference was made to bail.

IX.

Thereafter and on August 6, 1951, petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

X.

On August 6, 1951, the aforesaid motion to fix or reduce bail came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

XI.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S.C.A. Section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XII.

That thereupon, and at the request of counsel for one of the defendants herein, Philip Marshall Connelly, the said Judge James M. Carter withheld his ruling on the said Connelly's motion to fix or reduce bail until an application could be made to the

ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XIII.

That thereafter, the motion to fix or reduce bail on your petitioner's behalf was argued before the said Judge and on August 8, 1951, your petitioner's bail was fixed at the sum of $25,000.

XIV.

Thereafter, on August 13, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that petitioner be released from the custody of the respondent upon reasonable bail, and on the said day the writ was issued by the Honorable William C. Mathes, a Judge of this Court and made returnable before said Judge on August 15, 1951.

XV.

On August 15, 1951, the said writ came on for hearing before the said Judge William C. Mathes, and after hearing, and by order dated August 17, 1951, the said petition was dismissed and the writ discharged.

XVI.

On August 18, 1951, your petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order discharging the writ of habeas corpus.

XVII.

Thereafter, and on August 24, 1951, the United States Court of Appeals rendered its decision on the application of the defendant herein, Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter, and the said Court did hold that the aforesaid affidavit of bias and prejudice was legally

sufficient and ordered the said Judge to proceed no further respecting the said Connelly's bail proceedings or in connection with the said Connelly's prosecution under the indictment.

XVIII.

In view of the decision of the Court of Appeals, and because of the doubt created thereby as to whether the said Judge James M. Carter had the power or jurisdiction originally to fix or reduce bail for petitioner or the other petitioners herein, after the aforesaid joint affidavit of bias and prejudice was filed, the petitioner decided to withdraw the aforesaid appeal.

XIX.

On August 27, 1951, the United States Attorney for the Southern District of California, counsel for the respondent, and counsel for the petitioner stipulated in writing to dismiss the aforesaid appeal and said stipulation was filed with the clerk of the United States Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court.

XX.

On August 29, 1951, petitioner together with the other defendants has brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to the aforesaid Judge William C. Mathes.

XXI.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951, fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18, 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951, as the day for the appearance of counsel to de-

termine the date of trial which the said Judge indicated would be October 30, 1951, unless strong reason was shown to the contrary.

XXII.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail and unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XXIII.

Petitioner is advised by Counsel that under the Constitution, petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXIV.

Petitioner was born in the City of Willamantic, State of Connecticut, on May 2, 1913, and is a native-born citizen of the United States.

XXV.

Petitioner is married and lives with her husband in the City and County of San Francisco; her husband has been and now is a meat packer, and earns in his employment between $60 and $65 per week; petitioner is employed as a waitress and earns in her employment between $40 and $45 per week. Apart from their earnings as aforesaid, petitioner and her husband have no other income, property

or assets, except a small commercial bank account and an automobile.

XXVI.

Petitioner is the mother of two minor children, to-wit, Mary Margaret, aged three years, and Joseph, aged eight years; the elder child is ill and continually suffers from an asthmatic condition, and is constantly under the care of Dr. Smilie of the Permanente Hospital; said elder child needs the constant and immediate care of petitioner in that he suffers asthmatic attacks during the night; petitioner has no relatives in the City and County of San Francisco, or in the immediate vicinity, who are able to take care of said minor children.

XXVII.

Petitioner has never been convicted of a crime.

XXVIII.

Petitioner is ill and under medical care for a thyroid deficiency and must necessarily have constant medication; and she has been informed by the Permanente Clinic in San Francisco of a uterine tumor that will need surgical treatment in the immediate future. As a result of these conditions petitioner is at the present time suffering from edema of the legs and her legs are now in a swollen state. A tonsillectomy was performed upon petitioner in 1949 and she suffered another attack of tonsilitis in January, 1951 when she was extremely ill and suffered a serious ear infection. Petitioner has been subject to critical attacks of tonsilitis and has been told by her physician to expect that these attacks will continue in the future.

XXIX.

Petitioner hereby states and represents to this Court that she intends in good faith to remain and that she will remain

within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that she does not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioner believes that she is not guilty of the offense charged in the indictment and she intends to vigorously prosecute her defense. Petitioner believes that upon the trial of this indictment herein, she will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive her of liberties secured to her by the Constitution of the United States.

XXX

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XXXI

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

XXXII

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XXXIII

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44., Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945,

13-A. Article "The Present Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XXXIV

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XXXV

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XXXVI

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XXXVII

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XXXVIII

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XXXIX

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XL

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XLI

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLII

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLIII

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLIV

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XLV

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XLVI

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

XLVII

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

/s/ Loretta Harris Stark

(verified September 4, 1951)

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000 reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants

$5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnsen. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personationsand Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act *44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Juvenile Delinquency			
Forgery U.S. Money Order)		1	
Mailing obscene letter	10- 5,000	1	$ 2,500
Engage in business of purchasing spirits for resale without basic permit		2	2,500
Transport stolen motor vehicle	5- 5,000	1	
Forging and cashing Government bonds	10- 1,000	2	2,500
Theft of mail	5- 2,000	1	1,000
Forging Government Obligation	15- 5,000	1	500
Bank robbery, transporting interstate stolen money and flight to avoid prosecution	25-10,000	3	Held No Bond
Forging and uttering Government check	10- 1,000	2	1,000
Transporting stolen motor vehicle in foreign commerce	5- 5,000	1	3,000 (reduced to 2,000)
Anti-trust conspiracy to fix, determine, establish and maintain noncompetitive prices, etc. of fire extinguishers	1- 5,000	1	Own Recognizance (later 1,000)

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivers Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognisance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Rexognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion Income taxes	5- $10,000	2	Own Recongizance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering goverment checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	00
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

CHARGE	PENALTY		COUNTS	BAIL
Anti-trust, fixing prices for fish	1-	$ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5-	2,000	6	Own Recognizance
Official asking and accepting bribe	3-		14	1,000
Embezzlement and theft of U.S. property				
False documents Filed with Department of Agriculture	5-	10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury			1	1,000
Forging U.S. Treasury Checks	10-	1,000	8	1,000
Concealment of narcotics	10-	5,000	1	2,000
Perjury committed before Federal Grand Jury	5-	2,000	1	5,000
Mail fraud and Conspiracy	5-	10,000	5	25,000*
Mail fraud and Conspiracy	5-	10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12-	5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 605; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy; Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500.
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000.
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register,firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BA
Illegal sale of narcotics	5 - $2,000	3	2,
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10 (redu
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,
Theft of mail; obstruction of correspondence	5 - 2,000	1	1
Transport stolen car	5 - 5,000	1	1
Theft of mail by postal employee	5 - 2,000	1	1
Failure to report for induction	5 - 10,000	1	5
Perjury committed before Grand Jury	5 - 2,000	2	10
Obstruction of correspondence	5 - 500	1	2
Transport stolen auto	5 - 5,000	1	5
Failure to report for induction	5 - 10,000	1	2
Failure to file Questionnaire	5 - 1,000	2	2

* Referred to in Exhibit A

EXHIBIT "B"

BAIL	CHARGE	PENALTY	COUNTS	BAIL
2,500	Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
10,000* (reduced to 5,000)	Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - 10,000	3	Own Recognizance
	Failed and refused to be inducted	5 - 10,000	1	2,500
2,500	Illegal possession of Marijuana	5 - 2,000	1	1,500
1,000	Conspiracy to corruptly endeavor to influence a witness and solici-			
1,000	tation of a bribe by such witness	5 - 10,000	1	Own Recognizance
1,000	Failure to register firearm	5 - 2,000	1	1,000
5,000	Failure to register firearm	5 - 2,000	1	1,000
10,000*	Servicemen's Readj. Act 1944	1 - 1,000	3	500
2,000	Transport Stolen Auto	5 - 5,000	1	1,000
5,000	Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
2,500				
2,500	Theft of mail by postal employee	5 - 2,000	4	1,000
	Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - 5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - $ 1,000	4	Own Recognizance
Forging Government Check	10 - 1,000	2	$ 5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - $10,000	1	$1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizanc

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of Marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense - kick - backs on sub-contracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM SCHNEIDERMAN, et al., Defendants.

No. 21883-Crim.

O R D E R

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1981.

United States District Judge

PRESENTED BY:

WALTER S. BIRNS
Chief Assistant U. S. Attorney

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division
600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411
Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

NO. 13436-BH

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, Loretta Starvus Stack, is not unlawfully imprisoned or restrained of her liberty, and her imprisonment and detention are not illegal, arbitrary or a denial of rights secured to her by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951, in the City of San Francisco, State of California, by Special Agents of the Federal Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V. Calverley, United States Commissioner for the Southern District of California,

K:MW

pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest she was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorabl Francis St. J. Fox, at San Francisco, California, who then and there arraigned said petitioner and set bail in the amount of $ 2,500 pending removal to this district. Thereafter, on or about the 27th day of July, 1951, an application was made to the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for increase of said bail. Following a full hearing on said application, said District Judge modified the order of the Commissioner, and increased bail of the petitioner to the sum of $50,000 pending removal of the petitioner to this district, and in default thereof ordered the petitioner committed to the custody of the United States Marshal in San Francisco, California. Thereafter, on July 28, 1951, the petitioner herein filed a petition for writ of habeas corpus, which petition was heard by the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for the purpose of obtaining a further reduction of bail. This petition was denied.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned. On August 1, 1951, following the return of the indictment herein, the petitioner was removed from the City and County of San Francisco and brought to the County of Los Angeles, where

custody was delivered to the respondent herein, James J. Boyle, United States Marshal for the Southern District of California.

V

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request, the Order setting said matter for plea on August 20th, 1951, was vacated and the plea on said indictment was again continued, at petitioner's request, until the 22nd day of August, 1951. On August 22nd, 1951, the plea was continued to August 29th, 1951, and on August 29th, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose Court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs IX to X, Y of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided August 24,1951), was rendered, Judge James M. Carter did, on the 29th day of August,1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J.McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August,1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30,1951, reducing the amount of bail set on said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm. C. Mathes and Louis E. Goodman the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendant

in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2,1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3,1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in said indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshal for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismissed and that the petitioner, Loretta Starr Stark, be remanded to respondent's custody to be dealt with according to the laws of the United States of America.

JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

/s/ James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me this 6th day of September, 1951.

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California

By /s/ Clerk [illegible] Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, Defendants.	No. _____ CD (U.S.C., Title 18, Sec. 11 1946 Ed. U.S.C., Title 18, Sec. 371948 Ed.) Section 3 of the Smith Act, 54 Stat. 671 - Conspiracy to violate the Smith Act) I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the

Smith Act 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume Leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants.

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to,

"Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of

the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950 WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at

2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

Foreman

ERNEST A. TOLIN,
United States Attorney.

Stipulated in Lds of Court Stat

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. K 438

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs. No. 13439

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs. No. 13440

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs. No. 13441

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner,

vs. No. 13442

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs. No. 13443

JAMES J. BOYLE, United States Marshal,

Respondent.

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District Cour

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436-BH
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437-BH
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13438-BH

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13439-BH

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440-BH

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13441-BH

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13442-BH

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443-BH

OLETA O'CONNOR YATES,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13444-BH

ROSE CHERNIN KUSNITZ,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13445-BH

MARY BERNADETTE DOYLE,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13446-BH

ALBERT JASON LIMA,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive, and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case, and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle, No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delays the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

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United States Attorney

RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

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Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 6th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 6th day of September 1951, and approved as to form.

Ben Margolis

Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By
Ben Margolis

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Attorneys for remaining Petitioners-Appellants

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent,	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 6th day of September, 1951.

prosecution under the above indictment is granted and the writ ordered issued."

XIII.

Thereafter, and on August 29, 1951, the petitioner together with the other defendants were brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the Chief Judge of the said District Court to Honorable William C. Mathes, another Judge of said District Court..

XIV.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951 fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18, 1951 as the time for filing motions addressed to said indictment and September 26 as the time for argument of said motions; and fixed September 10, 1951 as the day for the appearance of counsel to determine the date of trial which the said Judge indicated would be October 30, 1951 unless strong reason was shown to the contrary.

XV.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail have unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XVI.

(a) Your petitioner is a native-born citizen of the United

/s/ Ben Margolis

Ben Margolis

/s/ Daniel G. Marshall

Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis

Ben Margolis

/s/ Leo A. Sullivan

Leo A. Sullivan

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Petitioners

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

Nos. 13436/13447

DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appeal, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

DATED: September 6, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitioner

Agreed to:

United States Attorney

LIBRARY
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IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, -vs- JAMES J. BOYLE, United States Marshal, Respondent.	No.

TRANSCRIPT OF RECORD ON APPEAL

(PHILIP MARSHALL CONNELLY)

NAMES AND ADDRESSES OF COUNSEL

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Notice Of Appeal

Designation Of Record

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Attorneys For Petitioner

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

PHILIP MARSHALL CONNELLY, Petitioner, v. JAMES J. BOYLE, United States Marshal, Respondent.	No. 1348-WM PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

PHILIP MARSHALL CONNELLY, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of his liberty, to produce the body of your petitioner, Philip Marshall Connelly before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 26, 1951, your petitioner was arrested near his home in the city of Los Angeles, County of Los Angeles, State of

California, upon a warrant issued July 25, 1951 by Howard V. Calverley, United States Commissioner in the Southern District of California, pursuant to a complaint charging your petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

Following petitioner's arrest and on July 26, 1951, your petitioner was arraigned before said United States Commissioner and by said Commissioner was ordered to be held in the custody of the respondent herein upon bail fixed by said Commissioner in the sum of $75,000 and by virtue of such order your petitioner was confined in the County Jail of the County of Los Angeles in the custody of said respondent on said day and where petitioner has continuously remained until the present time.

III.

Thereafter and on or about July 27, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that your petitioner be released from the custody of the respondent upon reasonable bail in order that petitioner might properly prepare petitioner's defense and because the fixing of excessive bail by the United States Commissioner constituted a violation of the rights guaranteed to him by the Constitution of the United States.

IV.

An order to show cause why the said petition for writ of habeas corpus should not be granted was signed by Honorable Leon R. Yankwich, a judge of this Court on July 27, 1951 and made returnable before said Court on July 31, 1951 at 10 A.M.

V.

Upon information and belief, the United States Attorney summoned the Grand Jury to convene on July 31, 1951 at 9 A.M. and

in the space of about fifteen minutes, the said Grand Jury returned the indictment herein charging your petitioner together with eleven other named defendants with conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671.

VI.

That on July 31, 1951 when your petitioner's petition for writ of habeas corpus came on for hearing the Court was informed by the United States Attorney that an indictment had been returned and that for the aforesaid reason, the hearing on the petition for writ of habeas corpus before the Court had become moot, and that thereupon the Court discharged the order to show cause why the petition for writ of habeas corpus should not be granted.

VII.

Thereupon, and on the same day, your petitioner was taken before the Honorable James M. Carter, a judge of this Court before whom the indictment was returned and the said Court then announced that it was fixing bail in an amount recommended by the Grand Jury. Upon information and belief, the true bill returned against the defendants including your petitioner contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were written on a copy of the indictment with the notation of $75,000 for all defendants except the defendant, William Schneiderman, where the notation was $100,000, and that these writing were unsigned.

VIII.

Thereafter, and on August 6, 1951, your petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

IX

On August 6, 1951, the aforesaid motion to fix or reduce bail

came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

X.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S. C.A. section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XI.

Thereupon, and at the request of counsel for petitioner, the said Judge James M. Carter withheld his ruling on petitioner's motion to fix or reduce bail until an application could be made to the United States Court of Appeals for the Ninth Circuit for a ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XII.

Thereafter petitioner filed in said Court of Appeals his petition for writ of mandamus and/or prohibition to obtain said ruling in a proceeding entitled and numbered in said Court as Philip Marshall Connelly, petitioner vs. the United States District Court in and for the Southern District of California, Central Division, et al, No. 13,053. On August 24, 1951 said Court filed its opinion in said action concluding with its order as follows:

> "The petition for the permanent writ of prohibition ordering the respondent Judge to take no action in any matter affecting petitioner respecting his contentions regarding bail or in connection with his

States, born in 1903 at Everett, Bedford County, Pennsylvania. Continuously since 1912 he has been a resident of the State of California, having lived in the County of Los Angeles from 1912 to 1922, inclusive, and from ~~approximately 1926~~ 1925 to date.

(b) Petitioner is married and lives with his wife in the City of Los Angeles at 1733½ West 84th Street, in a home owned jointly by his wife and her mother. Petitioner owns no real property and has no earnings or assets other than his salary, as hereinbelow set forth.

(c) Petitioner's parents were born in the United States, his mother's family having migrated to Pennsylvania from Germany early in the Nineteenth Century and his father's family having come to the New England states from Ireland at about the same period. Petitioner has brothers living and employed in Southern California.

(d) Petitioner is employed as Los Angeles editor of the Daily People's World, a newspaper of general circulation, at a salary of $50.00 per week. Prior to his employment in such capacity approximately two years ago, petitioner was secretary-treasurer of the Los Angeles CIO Council, a federation of trade unions affiliated with the Congress of Industrial Organizations, for a period of eleven years, and prior thereto was a working newspaperman employed from time to time on various daily newspapers published in the State of California. Petitioner was the second president of the Los Angeles chapter of the American Newspaper Guild, was an international vice-president of the American Newspaper Guild from approximately 1937 to approximately 1943, and was the first president of the California State CIO Council, a state-wide federation of trade unions affiliated with the Congress of Industrial Organizations, for a period of approximately six years.

(e) Petitioner's daughter by a previous marriage resides in the City of San Francisco, California.

(f) In the course of his activities as a member and leader

of the American Newspaper Guild and the CIO as aforesaid, petitioner has heretofore been arrested for picketing activities on several occasions, the exact number being not now known to petitioner. On each such occasion petitioner was released pending trial, either on bail or on his own recognizance, and on each such occasion, without exception, he appeared at all proceedings subsequent to his arrest and his bail, where such was posted, was ultimately exonerated. Petitioner was a defendant in the case of People v. Daugherty and others, a criminal proceeding in the courts of the State of California arising out of picketing at the plant of the U. S. Motors Company in the City of Los Angeles in or about the year 1946; in connection therewith petitioner duly appeared at all of the proceedings therein, including the extended trial lasting for approximately forty-six trial days, and fully executed the sentence imposed.

(g) Petitioner's mother, now eighty-two years of age, is a resident of a Catholic home for the aged, where petitioner regularly visits her. Petitioner contributes to her maintenance there from $10.00 to $30.00 per month.

(h) Petitioner throughout the afternoon and evening of July 25, 1951 was followed by automobiles carrying persons whom petitioner believed to be agents of the Federal Bureau of Investigation. On the basis of newspaper reports quoting the Attorney General of the United States and the Director of the FBI from time to time since the decision of the Supreme Court of the United States in Dennis, et al v. United States on June 4, 1951, as intended to arrest and prosecute many persons under the said Smith Act, petitioner anticipated his arrest thereunder but made no effort and took no steps of any kind to avoid the same.

(i) Petitioner has been continuously under the care of Murray Abowitz, M. D., 6333 Wilshire Boulevard, Los Angeles, California since 1944. In his affidavit dated August 28, 1951 filed

in said case No. 21833 CD Dr. Abowitz states and describes the condition of petitioner as follows:

"He has been suffering from multiple glandular deficiency and hypertensive heart disease. The glandular deficiencies consist chiefly of hypopituitarism, hypothyroidism, hypogonadism, diabetes insipidus-like syndrome and extreme obesity. Before treatment his symptoms included:

"1. obesity: weight about 335 pounds

"2. high blood pressure: 190/120 in 1944 and after omitting all therapy for several months 225/155 in February 1951.

"3. lethargy, sluggishness, shortness of breath, drowsiness, excessive sleep, less than average perspiration, preference for extremely hot weather

"4. increased intake of fluid, up to 7 quarts daily

"5. pitting edema of both lower extremities.

"Under hormonal theraphy consisting of pituitary hormone, thyroid and testosterone all the above symptoms improved promptly and markedly. There was a weight loss of 120 pounds (lowest weight was 216 in 1945.) The blood pressure dropped to as low as 130/80. General feeling of well-being, good physical energy, mental alertness, increased perspiration, normal sleep habits resulted promptly under treatment. The increased fluid intake disappeared and the edema subsided.

"Xray examination of the sella tursica (location of the pituitary gland) in 1944 showed it to be small and the clinoid processes approximated and bridged.

"In addition to the multiglandular deficiencies, Mr.

Connelly suffers from essential hypertension, apparently secondary to the glandular deficiencies and the obesity. When his weight increases and when therapy is omitted the blood pressure rises as high as 225/155 (in February 1951.) Under proper hormonal and dietary control it ranges between 130 and 160 systolic, and 80 to 100 diastolic. The electrocardiograms have shown increasing left axis deviation and left ventricular strain. Xrays of the chest in 1950 and 1951 have shown enlargement of the heart. There have been episodes of cardiac arrhythmia (frequent extrasystoles) during the last 7 years resulting from either too much thyroid hormone or excessive smoking. These episodes of arrhythmia have been controlled by reducing the thyroid dosage and diminishing the use of tobacco.

"When Mr. Connelly was last under my care the regime of therapy was as follows:

"1. APL (pituitary hormone) (500 units per c.c.) 1 c.c. 3 times a week by injection

"2. Testosterone (male sex Hormone) 25 mgm twice weekly by injection.

"3. thyroid grains 3 daily orally

"4. Dexedrine Sulphate 5 mgm 3 times daily (appetite depressant)

"5. Ammonium chloride grains 7-1/2 3 times daily (diuretic)

"6. Reducing diet: high protein, low fat and carbohydrate; between 1000 and 1800 calories daily depending on amount of physical activity; low salt intake.

"The most important factor in this patient's medical care is a low carbohydrate, high protein diet. Careful

and frequent medical observation of this patient's blood pressure and fast heart are also essential. A moderately active regimen of exercises with the avoidance of excessive strain is important. Unusual and especially emotional and mental strain which, of course, tend to elevate his blood pressure which is already high should be avoided."

XVII

Petitioner hereby states and represents to this Court that he intends in good faith to remain and that he will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that he does not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioner believes that he is not guilty of the offense charged in the indictment and he intends to vigorously prosecute his defense. Petitioner believes that upon the trial of this indictment herein, he will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive him of liberties secured to him by the Constitution of the United States.

XVIII

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C". The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that

unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XIX

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

XX.

This indictment charges that as a part of the alleged conspiracy defendants, the co-conspirators (all but one of whom has suffered a final conviction under the conspiracy provisions of the Smith Act. (Dennis v. United States, 95 L. ed. Adv. Op. 865), and divers unknown persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs", "Daily Peoples World", "Daily Worker", and "The Worker".

Petitioner is informed and believes and therefore avers that the prosecution of the instant case will probably substantially follow the pattern cut by Dennis v. United States, supra, in which six months were consumed in taking evidence resulting in a record of 16,000 pages. Books, pamphlets, newspapers and magazines were

received in evidence, including, as shown in the dissenting opinio of Mr. Justice Douglas (P.913) Foundations of Leninism by Stalin (1924), the Communist Manifesto by Marx and Engels (1848), State and Revolution by Lenin (1917), History of the Communist Party of the Soviet Union (b) 1939. Problems of Leninism by Stalin, Strate and Tactics of World Communism and Program of the Communist International.

In his separate concurring opinion Mr. Justice Jackson supports his view by citing as sources, among others, the following books: Ivo Duchacek, The Strategy of Communist Infiltration; Czechoslovakia, 1944-1948, World Politics, vo. 2, No. 3 (April 1950), pp 345-372; and The February Coup in Czechoslovakia, ibid, July 1950, 511-532; see also Kertesz, The Methods of Communist Conquest; Hungary, 1944-1947, ibid, October 1950, pp 20-54; Lasswell, The Strategy of Soviet Propaganda, 24 Acad Pol Sci Proc 214, 221.

On information and belief, petitioner avers that literally hundreds of books have been written on the subject of the principles of Marxism-Leninism which this indictment charges defendants indoctrinated recruits and members of the Communist Party.

With respect to said Daily Peoples World, petitioner has been employed as its Los Angeles editor since about two years ago. For the last year this newspaper was published Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, the date alleged by this indictment as the starting point of the conspiracy charged, said newspaper published Monday through Saturday of each week. In other words, during the time petitioner has been employed by said newspaper about 520 issues have been published and during the period from April 1, 1945 to the beginning of said two year period about 1250 issues, a total for the entire period from April 1, 1945 of some 1770 issues of not less than 4 pages and as many as 8 to 10 pages of conventional size or tabloid size newspaper.

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by

M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Tasks". Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XXII

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XXIII

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XXIV

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XXV

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XXVI

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XXVII

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XXVIII

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XXIX

Petitioner is advised by Counsel that under the Constitution petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXX

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary, and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend petitioner against the charges which have been brought against petitioner.

XXXI

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be

determined in the premises.

DATED: This 4th day of September, 1951.

/s/ Philip Marshall Cone

(certified September 4, 1951)

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000 reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants

$5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personationsand Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act #44	1- 1,000	4	Own Recognzance
Transport stolen motor vehicle	5- 5,000	1	

Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Juvenile Delinquency (Forgery U.S. Money Order)		1	
Mailing obscene letter	10-$ 5,000	1	$ 2,500
Engage in business of purchasing spirits for resale without basic permit		2	2,500
Transport stolen motor vehicle	5- 5,000	1	
Forging and cashing Government bonds	10- 1,000	2	2,500
Theft of mail	5- 2,000	1	1,000
Forging Government Obligation	15- 5,000	1	500
Bank robbery, transporting interstate stolen money and flight to avoid prosecution	25-10,000	3	Held No Bond
Forging and uttering Government check	10- 1,000	2	1,000
Transporting stolen motor vehicle in foreign commerce	5- 5,000	1	3,000 (reduced to 2,000)
Anti-trust conspiracy to fix, determine, establish and maintain noncompetitive prices, etc. of fire extinguishers	1- 5,000	1	Own Recognizance (later 1,000)

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognisance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Recognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongizance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering goverment checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

COLLEGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Official asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5- 10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 605; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy; Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10;000	2	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	2,500
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - $10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of Marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj, Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B".

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - $5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods.	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - 1,000	4	Own Recognizanc
Forging Government Check	10 - 1,000	2	5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizanc
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizanc
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - 10,000	1	1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of Marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense - kick - backs on sub-contracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
WILLIAM SCHNEIDERMAN, et al.,
Defendants.

No. 21883-Crim.

O R D E R

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
112 West Ninth Street
Los Angeles 15, California
VAndike 7153
and
DANIEL G. MARSHALL
458 South Spring Street
Los Angeles 13, California
TRinity 6011

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13438

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marshal for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 North Spring Street, Los Angeles, California, on the 6th day of September, 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody of such officers or agents as may have the same for and on his behalf, the body of Philip Marshall Connelly, petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respondent herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

NO. 13438-MH

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, Philip Marshall Connelly, is not unlawfully imprisoned or restrained of his liberty, and his imprisonment and detention are not illegal, arbitrary or a denial of rights secured to him by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951, in the City of Los Angeles, State of California, by Special Agents of the Federa Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V. Calverley, United States Commissioner for the Southern District of California,

pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorable Howard V. Calverley, at Los Angeles, California, who then and there arraigned said petitioner and continued the matter to August 9, 1951 at 10:00 a.m. for preliminary examination and set bail in the amount of $75,000 pending said preliminary examination, and in default thereof ordered said petitioner committed to the custody of this respondent.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned.

V

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request, the order setting said matter for plea on August 20, 1951, was vacated and the plea on said indictment was again continued until the 22nd day of August, 1951. On August 22, 1951, the plea was continued at petitioner's request to August 29, 1951, and on August 29, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs VIII to XVIII of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided August 24,1951), was rendered, Judge James M. Carter did, on the 29th day of August,1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J.McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August,1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30,1951, reducing the amount of bail set on said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm. C. Mathes and Louis B. Goodman the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendant

in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2,1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3,1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in said indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshal for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismissed and that the petitioner, Philip Marshall Connelly, be remanded to respondent's custody to be dealt with according to the laws of the United States of America.

James J. Boyle

JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says;

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me
this 6th day of September, 1951.

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California

By Charles A. Sevy Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

February, 1951, Grand Jury

FILED
JULY 31, 1951
EDMUND L. SMITH, CLERK
By Maxine Lewis, Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE,

Defendants.

No. 21883 CD

[U.S.C., Title 18, Sec. 11 (1946 Ed.); U.S.C., Title 18, Sec. 371 (1948 Ed.); Section 3 of the Smith Act, 54 Stat. 671- Conspiracy to violate the Smith Act]

I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants

EXHIBIT "A"

herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaires of said Party knowing the purposes of the Party, and in such capacities would assume leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants;

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to, "Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said Party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California;

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at 2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

Robert B. Young, III
Foreman

Ernest A. Tolin
ERNEST A. TOLIN,
United States Attorney.

Stipulation & Order of Consolidation

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. B 438

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

No. 13439

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs.

No. 13440

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

No. 13441

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner,

vs.

No. 13442

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs.

No. 13443

JAMES J. BOYLE, United States Marshal,

Respondent.

CLETA O'CONNOR YATES,

Petitioner,

vs.

No. 13444

JAMES J. BOYLE, United States Marshal,

Respondent.

ROSE CHERNIN KUSNITZ,

Petitioner,

vs.

No. 13445

JAMES J. BOYLE, United States Marshal,

Respondent.

MARY BERNADETTE DOYLE,

Petitioner,

vs.

No. 13446

JAMES J. BOYLE, United States Marshal,

Respondent.

ALBERT JASON LIMA,

Petitioner,

vs.

No. 13447

JAMES J. BOYLE, United States Marshal,

Respondent.

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

t is so ordered.

/s/ Ben Harrison
JUDGE of the United States District Cour

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436-BH
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437-BH
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13438-BH

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13439-BH

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440-BH

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13441-BH

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13442-BH

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443-BH

CLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444-BH
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445-BH
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446-BH
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses th forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of ba before him in the criminal case, and have admitted in evidence th transcript of the proceedings in Healey et al. v. Boyle, No. 1336 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other pur pose.

The procedure followed in these matters is that outline in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delay the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

XXXV

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XXXVI

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35" -- Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XXXVII

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XXXVIII

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XXXIX

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XL

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various soufces enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XLI

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XLII

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XLIII

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XLIV

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLV

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLVI

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLVII

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XLVIII

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XLIX

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

/s/ Dorothy Rosenblum Healey

(verified September 4, 1951)

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000 reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants $5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase scught.

(3) Hawaii-U.S. v. Hall, et al

bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personations and Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED:- This 6th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 6th day of September 1951, and approved as to form.

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis

Ben Margolis

/s/ Daniel G. Marshall

Daniel G. Marshall

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Philip Marshall Connelly

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appeal, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

DATED: September 6, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitioners

Agreed to:

United States Attorney

LIBRARY
SUPREME COURT, U.S.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, -vs- JAMES J. BOYLE, United States Marshal, Respondent.	No.

TRANSCRIPT OF RECORD ON APPEAL

(DOROTHY ROSENBLUM HEALEY)

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Notice Of Appeal

Designation Of Record

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Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

DOROTHY ROSENBLUM HEALEY,

Petitioner,

v.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 18409-C

PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Dorothy Rosenblum Healey, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of her liberty, to produce the body of your petitioner, Dorothy Rosenblum Healey before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 26, 1951, your petitioner was arrested at her home

in the city of Los Angeles, County of Los Angeles, State of California, upon a warrant issued July 25, 1951 by Howard V. Calverley, United States Commissioner in the Southern District of California, pursuant to a complaint charging your petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

Following petitioner's arrest and on July 26, 1951, your petitioner was arraigned before said United States Commissioner and by said Commissioner was ordered to be held in the custody of the respondent herein upon bail fixed by said Commissioner in the sum of $75,000 and by virtue of such order your petitioner was confined in the County Jail of the County of Los Angeles in the custody of said respondent on said day and where petitioner has continuously remained until the present time.

III.

Thereafter and on or about July 27, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that your petitioner be released from the custody of the respondent upon reasonable bail in order that petitioner might properly prepare petitioner's defense and because the fixing of excessive bail by the United States Commissioner constituted a violation of the rights guaranteed to him by the Constitution of the United States.

IV.

An order to show cause why the said petition for writ of habeas corpus should not be granted was signed by Honorable Leon R. Yankwich, a judge of this Court on July 27, 1951 and made returnable before said Court on July 31, 1951 at 10 A.M.

V.

Upon information and belief, the United States Attorney summoned the Grand Jury to convene on July 31, 1951 at 9 A.M. and

in the space of about fifteen minutes, the said Grand Jury returned the indictment herein charging your petitioner together with eleven other named defendants with conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671.

VI.

That on July 31, 1951 when your petitioner's petition for writ of habeas corpus came on for hearing, the Court was informed by the United States Attorney that an indictment had been returned and that for the aforesaid reason, the hearing on the petition for writ of habeas corpus before the Court had become moot, and that thereupon the Court discharged the order to show cause why the petition for writ of habeas corpus should not be granted.

VII.

Thereupon, and on the same day, your petitioner was taken before the Honorable James M. Carter, a judge of this Court before whom the indictment was returned and the said Court then announced that it was fixing bail in an amount recommended by the Grand Jury. Upon information and belief, the true bill returned against the defendants including your petitioner contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were written on a copy of the indictment with the notation of $75,000 for all defendants except the defendant, William Schneiderman, where the notation was $100,000, and that these writings were unsigned.

VIII.

Thereafter, and on August 6, 1951, your petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

IX.

On August 6, 1951, the aforesaid motion to fix or reduce bail

came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

X.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S. C.A. section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XI.

That thereupon, and at the request of counsel for one of the defendants herein, Philip Marshall Connelly, the said Judge James M. Carter withheld his ruling on the said Connelly's motion to fix or reduce bail until an application could be made to the United States Court of Appeals for the Ninth Circuit for a ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XII.

That thereafter, the motion to fix or reduce bail on your petitioner's behalf was argued before the said Judge and on August 8, 1951 your petitioner's bail was fixed at the sum of $50,000.

XIII.

Thereafter, on August 13, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that petitioner be released from the custody of the respondent upon reasonable bail, and on the said day the writ was issued by the Honorable William C. Mathes, a Judge of this Court and made returnable before said Judge on August 15, 1951.

XIV.

On August 15, 1951 the said writ came on for hearing before the said Judge William C. Mathes, and after hearing, and by order dated August 17, 1951, the said petition was dismissed and the writ discharged.

XV.

On August 18, 1951, your petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order discharging the writ of habeas corpus.

XVI.

Thereafter, and on August 24, 1951, the United States Court of Appeals rendered its decision on the application of the defendant herein, Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter, and the said Court did hold that the aforesaid affidavit of bias and prejudice was legally sufficient and ordered the said Judge to proceed no further respecting the said Connelly's bail proceedings or in connection with the said Connelly's prosecution under the indictment.

XVII.

In view of the decision of the Court of Appeals, and because of the doubt created thereby as to whether the said Judge James M. Carter had the power or jurisdiction originally to fix or reduce bail for petitioner or the other petitioners herein, after the aforesaid joint affidavit of bias and prejudice was filed, the petitioner decided to withdraw the aforesaid appeal.

XVIII.

On August 27, 1951, the United States Attorney for the Southern District of California, counsel for the respondent, and counsel for the petitioner stipulated in writing to dismiss the aforesaid appeal and said stipulation was filed with the clerk of the United States Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court.

XIX.

Thereafter, and on August 29, 1951, the petitioner together with the other defendants were brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to the aforesaid Judge William C. Mathes.

XX.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951 fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18, 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951 as the day for the appearance of counsel to determine the date of trial which the said Judge indicated would be October 30, 1951 unless strong reason was shown to the contrary.

XXI.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail and unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XXII.

Petitioner is advised by Counsel that under the Constitution, petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXIII.

Petitioner was born in Denver, Colorado, on September 22, 1914. From 1914 to 1921 she lived in Denver, Colorado.

In 1921, she moved to California, and from that time until 1932 she lived on and off in Los Angeles, Oakland and Berkeley, California; from 1932 to 1940 she lived in Los Angeles, California; from 1940 to 1943 she lived in San Francisco, California; from 1943 to date she has lived in Los Angeles.

XXIV.

Petitioner's present address is 1733½ West 84th Street, Los Angeles, California, in a home which she owns in joint tenancy with her mother.

XXV.

Prior to 1937, petitioner worked as a waitress, cannery worker, and did office work; from 1937 to 1939, she was a representative of the United Cannery, Agricultural, Packing and Allied Workers of America, and during this period petitioner was International Vice-President and International Representative for Southern California; in 1939, she worked as an organizer for Labor's Non-Partisan League; from 1940 to 1943, petitioner had a Civil Service job with the State of California, to-wit, the job of Deputy Labor Commissioner, working out of San Francisco. Petitioner took maternity leave from that job and subsequently resigned. In 1943 she became International Organizer of the Mine, Mill and Smelter Workers' Union, and held that job until 1945. In 1944 petitioner was appointed as an alternate member of the WarrLabor Board in Los Angeles.

XXVI.

Petitioner is married to Philip Connelly, a named defendant herein; she has a son by a former marriage, Richard Earle Healey, aged eight. Also living in Los Angeles are her mother, aged sixty-six and one brother. Petitioner also has two sisters living in Berkeley, California.

XXVII.

Petitioner has previously been arrested and released on her her own recognizance and on bail, and in each instance, she has appeared whenever required to do so in the then pending proceedings. Specifically, in 1934, she was arrested and charged with unlawful assembly and certain other charges which she does not recall, all of which charges arose out of picketing and similar activity arising out of a labor dispute. Petitioner was out on bail from January to March and at all times she appeared in the proceedings as required and at the conclusion of the proceedings her bail was exonerated. In 1949, she was tried in the Court herein for civil and criminal contempt for failing to respond to questions before the Grand Jury. During these proceedings before the District Court, to the best of her recollection where an oral presantment had been lodged against her, no bail was required from her and although the matter was continued on a number of occasions when petitioner was required to appear in the hearing before the Court, she was in attendance. When petitioner was convicted of contempt and sentenced to imprisonment for a period of eighteen months, she was released on bail pending appeal in the sum of 5^{00}. At all times during these proceedings, petitioner responded to all Court orders requiring her appearance. These proceedings at one stage or another lasted for more than a year. On appeal her conviction was reversed and bail was exonerated.

XXVIII.

Petitioner suffers from headaches which she usually gets every few days, and which are usually quite severe for a period of twenty-four hours; these headaches have been diagnosed as a possible migraine condition. Petitioner has a bad gum condition with constant inflammation which requires attention.

XXIX.

Although petitioner has always been employed, she has always cared for her son who is now eight years old; her son is accustomed to her presence at mealtimes both in the evenings and in the morning, and to her attention during the early evening hours. Her absence from her son will deprive him of petitioner's care and will create serious problems with respect to his physical and mental welfare.

XXX.

Over a long period of time, petitioner has been periodically followed and trailed by FBI agents. The last occasion began on Tuesday, July 24, at 5 P.M., when she began to be followed by a black Pontiac, bearing the license number #1N 140. She was followed so openly that the parking attendant near her office, barber shop operators, cigar stand attendant, remarked that her "boy friends" were back again. Petitioner was followed all day Wednesday, July 25, everywhere she went, by reason of these facts and by reason of the wide publicity given over a long period of time by the United States Department of Justice to its intention to prosecute persons alleged to be leading officers of the Communist Party, and because of constant publicity over a long period of time, alleging that petitioner is a leading official of the Communist Party of Los Angeles, she has been expecting, over a long period of time, that she would be arrested and charged with violation of the Smith Act. At all times it has been her intention, in the event of such charge and such arrest, to defend herself in court and to do everything possible to have the proceedings dismissed or to secure a Not Guilty verdict. In contemplation of the possibility of such prosecution, she has consulted various counsel (not her counsel appearing herein) for the purpose of ascertaining whether and upon what terms they would represent her in the event of such arrest.

XXXI.

Petitioner is employed at a salary of $50.00 per week, and has no other source of income except the income of her husband, who as set forth above, is a named defendant herein, also in custody. Aside from her interest in the home, as set forth above, petitioner owns no realty and has no other kinds of assets of any kind, except an automobile.

XXXII.

Petitioner hereby states and represents to this Court that she intends in good faith to remain and that she will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that she does not intends to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioner believes that she is not guilty of the offense charged in the indictment and she intends to vigorously prosecute her defense. Petitioner believes that upon the trial of this indictment herein, she will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive her of liberties secured to her by the Consitution of the United States.

XXXIII

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XXXIV

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act #44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Juvenile Delinquency (Forgery U.S. Money Order)		1	
Mailing obscene letter	10-$ 5,000	1	$ 2,500
Engage in business of purchasing spirits for resale without basic permit		2	2,500
Transport stolen motor vehicle	5- 5,000	1	
Forging and cashing Government bonds	10- 1,000	2	2,500
Theft of mail	5- 2,000	1	1,000
Forging Government Obligation	15- 5,000	1	500
Bank robbery, transporting interstate stolen money and flight to avoid prosecution	25-10,000	3	Held No Bond
Forging and uttering Government check	10- 1,000	2	1,000
Transporting stolen motor vehicle in foreign commerce	5- 5,000	1	3,000 (reduced to 2,000)
Anti-trust conspiracy to fix, determine, establish and maintain noncompetitive prices, etc. of fire extinguishers	1- 5,000	1	Own Recognizance (later 1,000)

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos.	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognizance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Rexognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongi-zance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering goverment checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Official asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5- 10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 603; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy; Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearms	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	2,500
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500
* Referred to in Exhibit A	-		

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - 10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of Marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj. Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - 5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - 1,000	4	Own Recognizanc
Forging Government Check	10 - 1,000	2	5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - $10,000	1	$1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of Marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense - kick - backs on sub-contracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, No. 21883-Crim.

Plaintiff,

vs. O R D E R

WILLIAM SCHNEIDERMAN, et al.,

Defendants.

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
112 West Ninth Street
Los Angeles 15, California
VAndike 7153
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
HIghtower 4-1707
Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

[redacted],

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13439-C

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marsh for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 Nort Spring Street, Los Angeles, California, on the 6th Day of September 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody such officers or agents as may have the same for and on his behalf, the body of [redacted], petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respondent herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

DOROTHY ROSEBLUM REALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

NO. 13477-C

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agent and deputies, respectfully make the following return and answer to this Honorab Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, Dorothy Rosenblum Realey, is not unlawfully imprisoned or restrained of her liberty, and her imprisonment and detention are not illegal, arbitrary or a denial of rights secured to her by the Constitu tion of the United States, but said petitioner is in my custody under proper an lawful authority.

II

That said petitioner was taken into custody on July 26, 1951, in the City of Los Angeles, State of California, by Special Agents of the Fedor Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V. Calverley, United States Commissioner for the Southern District of California,

K:MW.

pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorable Howard V. Calverley, at Los Angeles, California, who then and there arraigned said petitioner and continued the matter to August 9, 1951 at 10:00 a.m. for preliminary examination and set bail in the amount of $75,000 pending said preliminary examination, and in default thereof ordered said petitioner committed to the custody of this respondent.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned.

V

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request, the order setting said matter for plea on August 20, 1951, was vacated and the plea on said indictment was again continued until the 22nd day of August, 1951. On August 22, 1951, the plea was continued at petitioner's request to August 29, 1951, and on August 29, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs VIII to XVIII of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided August 24,1951), was rendered, Judge James M. Carter did, on the 29th day of August,1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J.McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August,1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30,1951, reducing the amount of bail set on said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm. C. Mathes and ~~Louis E. Goodman~~ the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendan

in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2, 1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3, 1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in said indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshal for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismissed and that the petitioner, Dorothy Rosenblum Healey, be remanded to respondent's custody to be dealt with according to the laws of the United States of America.

James J. Boyle

JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me
this 6th day of September, 1951.

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California

By Charles A Sutton Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

February, 1951, Grand Jury

FILED
JULY 31, 1951
EDMUND L. SMITH, CLERK
By Maxine Lewis, Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM SCHNEIDERMAN,
DOROTHY ROSENBLUM HEALEY,
ALBERT JASON LIMA,
OLETA O'CONNOR YATES,
CARL RUDE LAMBERT,
PHILIP MARSHALL CONNELLY,
ROSE CHERNIN KUSNITZ,
AL RICHMOND, also known as
Abraham Richman,
ERNEST OTTO FOX, also known as
Ernest Otto Fuchs,
HENRY STEINBERG,
LORETTA STARVUS STACK, and
MARY BERNADETTE DOYLE,

Defendants.

No. 21883 CD

[U.S.C., Title 18, Sec. 11 (1946 Ed.);
U.S.C., Title 18, Sec. 371 (1948 Ed.);
Section 3 of the Smith Act, 54 Stat. 671-
Conspiracy to violate the Smith Act]

I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants

EXHIBIT A

herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaires of said Party knowing the purposes of the Party, and in such capacities would assume leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants;

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to, "Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said Party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California;

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein did attend and participate in a meeting at 2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

Robert B. Young, III
Foreman

Ernest A. Tolin
ERNEST A. TOLIN,
United States Attorney.

Stipulation & Order of Consolidation

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

No. 13436

JAMES J. BOYLE, United States Marshal,

Respondent.

AL RICHMOND,

Petitioner,

vs.

No. 13437

JAMES J. BOYLE, United States Marshal,

Respondent.

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

No. B 438

JAMES J. BOYLE, United States Marshal,

Respondent.

DOROTHY ROSENBLUM HEALEY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13439
ERNEST OTTO FOX, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13440
WILLIAM SCHNEIDERMAN, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13441
CARL RUDE LAMBERT, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13442
HENRY STEINBERG, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13443

OLIVIA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District Cour

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13436-BH

AL RICHMOND,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13437-BH

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13438-BH

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13439-BH

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440-BH

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13441-BH

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13442-BH

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443-BH

CLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444-BH
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445-BH
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446-BH
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive, and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case, and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle, No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delays the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

ERNEST A. TOLIN
United States Attorney

RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA,

Petitioners,

v.

JAMES J. BOYLE, United States Marshal,

Respondent.

Nos. 13436/13447

ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 6th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 6th day of September 1951, and approved as to form.

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Daniel G. Marshall

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By
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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

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By /s/ Ben Margolis
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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appeal, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

DATED: September 6, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitione

Agreed to:

United States Attorney

LIBRARY
SUPREME COURT, U.S.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, -vs- JAMES J. BOYLE, United States Marshal, Respondent.	No.

TRANSCRIPT OF RECORD ON APPEAL

(CARL RUDE LAMBERT)

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Notice Of Appeal

Designation Of Record

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

CARL RUDE LAMBERT,

Petitioner,

v.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 1044-BH

PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Carl Rude Lambert, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of his liberty, to produce the body of your petitioner, Carl Rude Lambert before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 25, 1951, a warrant was issued by Howard V.

Calverley, United States Commissioner in the Southern District of California, pursuant to a complaint charging your petitioner and one William Schneiderman, with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

On July 26, 1951, petitioner was unlawfully arrested by agents of the Federal Bureau of Investigation who produced no warrant for arrest and stated that they needed no warrant of arrest for your petitioner although your petitioner demanded the production of a warrant of arrest; that said agents declined to state the reasons for your petitioner's arrest or the existence of any charges against petitioner or the fact that a warrant had been issued, and thereupon forcibly took petitioner into custody.

III.

Following petitioner's arrest as aforesaid and on July 26, 1951, petitioner was arraigned before United States Commissioner Francis St. J. Fox in San Francisco and by said Commissioner was ordered to be held in custody upon bail fixed by said Commissioner in the sum of $75,000, and by virtue of such order your petitioner was confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

IV.

Thereafter and on or about July 27, 1951, petitioner made application to the Honorable Louis E. Goodman, a judge of the United States District Court for the Northern District of California for a reduction of said bail. On said day the said District Judge modified the aforementioned order of the said Commissioner and did make his order fixing bail in the sum of $50,000. In fixing the said sum the District Judge rule that the narrow question before him was the amount of bail which

should be fixed pending removal to this Court where the complaint originally issued. By virtue of said order of said Judge, petitioner remained confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

V.

Thereafter, on July 28, 1951, petitioner filed a petition for writ of habeas corpus to the said Honorable Louis E. Goodman, for a reduction of bail and the said Judge, basing his ruling on the record of proceedings of July 27, 1951, denied the petition.

VI.

Upon information and belief, the United States Attorney for the Southern District of California, summoned a Grand Jury to convene on July 31, 1951, at 9 A.M. and in the space of about fifteen minutes the said Grand Jury returned the indictment herein, charging your petitioner together with the above-mentioned defendants with a conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671.

VII.

On August 1, 1951, petitioner was removed from the County Jail of the City and County of San Francisco and brought to the County of Los Angeles where petitioner was confined in the County Jail of the County of Los Angeles under the custody of the United States Marshal James J. Boyle.

VIII.

Thereafter and on August 2, 1951, petitioner was taken before the Honorable James M. Carter, the judge of this Court before whom the indictment was returned. Upon information and belief, the true bill returned against the defendants contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were written

on a copy of the indictment with the notation of $75,000 for all defendants except the defendant William Schneiderman, where the notation was $100,000, and that these writings were unsigned. Upon arraignment before the said Judge no further reference was made to bail.

IX.

Thereafter and on August 6, 1951, petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

X.

On August 6, 1951, the aforesaid motion to fix or reduce bail came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

XI.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S.C.A. Section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XII.

That thereupon, and at the request of counsel for one of the defendants herein, Philip Marshall Connelly, the said Judge James M. Carter withheld his ruling on the said Connelly's motion to fix or reduce bail until an application could be made to the

United States Court of Appeals for the Ninth Circuit for a ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XIII.

That thereafter, the motion to fix or reduce bail on your petitioner's behalf was argued before the said Judge and on August 8, 1951, your petitioner's bail was fixed at the sum of $50,000.

XIV.

Thereafter, on August 13, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that petitioner be released from the custody of the respondent upon reasonable bail; and on the said day the writ was issued by the Honorable William C. Mathes, a Judge of this Court and made returnable before said Judge on August 15, 1951.

XV.

On August 15, 1951, the said writ came on for hearing before the said Judge William C. Mathes, and after hearing, and by order dated August 17, 1951, the said petition was dismissed and the writ discharged.

XVI.

On August 18, 1951, your petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order discharging the writ of habeas corpus.

XVII.

Thereafter, and on August 24, 1951, the United States Court of Appeals rendered its decision on the application of the defendant herein, Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter, and the said Court did hold that the aforesaid affidavit of bias and prejudice was legally

sufficient and ordered the said Judge to proceed no further respecting the said Connelly's bail proceedings or in connection with the said Connelly's prosecution under the indictment.

XVIII.

In view of the decision of the Court of Appeals, and because of the doubt created thereby as to whether the said Judge James M. Carter had the power or jurisdiction originally to fix or reduce bail for petitioner or the other petitioners herein, after the aforesaid joint affidavit of bias and prejudice was filed, the petitioner decided to withdraw the aforesaid appeal.

XIX.

On August 27, 1951, the United States Attorney for the Southern District of California, counsel for the respondent, and counsel for the petitioner stipulated in writing to dismiss the aforesaid appeal and said stipulation was filed with the clerk of the United States Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court.

XX.

On August 29, 1951, petitioner together with the other defendants has brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to the aforesaid Judge William C. Mathes.

XXI.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951, fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18, 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951, as the day for the appearance of counsel to de-

termine the date of trial which the said Judge indicated would be October 30, 1951, unless strong reason was shown to the contrary.

XXII.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail have unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XXIII.

Petitioner is advised by Counsel that under the Constitution petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with Counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXIV.

Petitioner is a citizen by birth of the United States and has lived in the United States continuously since his birth on October 7, 1896, except for approximately one year in Canada while he was employed by General Motors. Petitioner's place of birth is Ishpeming, Michigan. He has lived in the State of California since 1930, and in the City and County of San Francisco since 1937, and for the past ten years has lived in the same locality in the same residence in the Ingleside District of the City and County of San Francisco. He is married and lives with his wife at his said residence.

XXV.

That petitioner volunteered to the United States Army in May 1917 and served through three major offensives in France in World War I. That he was honorably discharged on August 19, 1919.

XXVI.

That petitioner has by vocation been a mechanic and railroad worker until his health became such that he could not exercise strenuous physical labor. That he does not earn in excess of $50 per week and that his wife; Louise Todd Lambert earns $40 per week with $5.00 allowed for an expense account. That he owns no property save and except one lot in the City and County of San Francisco of a value not in excess of $750.

XXVII.

That immediately after his discharge from the United States Army on August 19, 1919, and for a period of two years thereafter petitioner suffered and was treated for ulcers; and that in 1930 he was subjected to an exploratory operation at the Veterans Hospital in Sawtelle, Los Angeles County, California; and that said operation did prove successful but nevertheless he had to resort to strenuous and rigid diet. That he is still under a strenuous and rigid diet in order to prevent the recurrence of his ulcers aforesaid.

XXVIII.

That petitioner has been suffering, along with the other ailment mentioned above, with migraine headaches, and that he is under the care regularly of a competent physician for treatment and relief of said conditions.

XXIX.

That in the year 1926 petitioner was examined by a tuberculosis specialist in a sanitarium near his home in Escanaba, Michi

gan, and was advised and instructed to give up work in garages and factories because of the possibility that he would develop tuberculosis.

XXX.

Petitioner hereby states and represents to this Court that he intends in good faith to remain and that he will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that he does not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioner believes that he is not guilty of the offense charged in the indictment and he intends to vigorously prosecute his defense. Petitioner believes that upon the trial of this indictment herein, he will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive him of liberties secured to him by the Constitution of the United States.

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XXXII

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

XXX///

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XXX/V

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" J. Olgin. (These excerpts ran from page 14537 to 14 the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Jo Stalin. (The entire book consisting of 123 printed was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl B from "The Worker," dated 1/16/44, Mag. Sec., pages 7

8. Booklet entitled "The Communist," dated Feb.,

8-A. Pages 107 and 108 of booklet entitled "The C nist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communis of the United States of America," by Jacques Duclos, pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (Thi icle ran from page 14557 to 14580 in the said Joint dix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Task Resolution of National Board Communist Political Ass tion adopted June 2, 1945, from pages 4 and 5 of "Da Worker" of June 4, 1945. (This article ran from pag 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from 7 and 8 of "Daily Worker" of June 10, 1945. (This a ran from page 14594 to 14601 in the said Joint Appen

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XXXV

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XXXVI

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XXXVII

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XXXVIII

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XXXIX

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XL

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XLI

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XLII

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLIII

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLIV

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLV

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XLVI

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XLVII

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

XLVIII

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

/s/ Carl Leuke Lambert

(verified September 4, 1951)

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters.	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000.	10,000 reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants

$5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personationsand Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment ~~of assets~~ from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act #44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Juvenile Delinquency (Forgery U.S. Money Order)		1	
Mailing obscene letter	10-$ 5,000	1	$ 2,500
Engage in business of purchasing spirits for resale without basic permit		2	2,500
Transport stolen motor vehicle	5- 5,000	1	
Forging and cashing Government bonds	10- 1,000	2	2,500
Theft of mail	5- 2,000	1	1,000
Forging Government Obligation	15- 5,000	1	500
Bank robbery, transporting interstate stolen money and flight to avoid prosecution	25-10,000	3	Held No Bond
Forging and uttering Government check	10- 1,000	2	1,000
Transporting stolen motor vehicle in foreign commerce	5- 5,000	1	3,000 (reduced to 2,000)
Anti-trust conspiracy to fix, determine, establish and maintain noncompetitive prices, etc. of fire extinguishers	1- 5,000	1	Own Recognizance (later 1,000)

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognisance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Rexognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongi-zance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering goverment checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Refered to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Official asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5- 10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 605; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy; Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	1	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	2,500
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500
* Referred to in Exhibit A	-		

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - 10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of Marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj. Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - $5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - 1,000	4	Own Recognizance
Forging Government Check	10 - 1,000	2	5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - $10,000	1	$1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizanc then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of Marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense -kick - backs on sub-contracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM SCHNEIDERMAN, et al., Defendants.

No. 21883-Crim.

O R D E R

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
112 West Ninth Street
Los Angeles 15, California
VAndike 7153
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
HIghtower 4-1707
Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13442-BH

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marsh for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 Nor Spring Street, Los Angeles, California, on the 6th Day of September 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody such officers or agents as may have the same for and on his behalf, the body of Carl Rude Lambert, , petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respondent herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

NO. 1362-BH

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, Carl Rude Lambert, is not unlawfully imprisoned or restrained of his liberty, and his imprisonment and detention are not illegal, arbitrary or a denial of rights secured to him by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951, in the City of San Francisco, State of California, by Special Agents of the Federal Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V. Calverley, United States Commissioner for the Southern District of California,

MW

pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest he was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorabl Francis St. J. Fox, at San Francisco, California, who then and there arraigned said petitioner and set bail in the amount of $ 75,000 pending removal to this district. Thereafter, on or about the 27th day of July, 1951, an application was made to the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for reduction of said bail. Following a full hearing on said application, said District Judge modified the order of the Commissioner, and reduced bail of the petitioner to the sum of $50,000 pending removal of the petitioner to this district, and in default thereof ordered the petitioner committed to the custody of the United States Marshal in San Francisco, California, Thereafter, on July 28, 1951, the petitioner herein filed a petition for writ of habeas corpus, which petition was heard by the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for the purpose of obtaining a further reduction of bail. This petition was denied.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned. On August 1, 1951, following the return of the indictment herein, the petitioner was removed from the City and County of San Francisco and brought to the County of Los Angeles, where

custody was delivered to the respondent herein, James J. Boyle, United States Marshal for the Southern District of California.

V

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request the Order setting said matter for plea on August 20th, 1951, was vacated and the plea on said indictment was again continued, at petitioner's request, until the 22nd day of August, 1951. On August 22nd, 1951, the plea was continued to August 29th, 1951, and on August 29th, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose Court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs ~~II~~ to ~~XII~~ of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided August 24,1951), was rendered, Judge James M. Carter did, on the 29th day of August,1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J.McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August,1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30,1951, reducing the amount of bail set on said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm. C. Mathes and Louis E. Goodman the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendant

in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2,1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3,1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in said indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshal for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismissed and that the petitioner, **Carl Rado Lambert**, be remanded to respondent's custody to be dealt with according to the laws of the United States of America.

James J. Boyle

JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me this 6th day of September, 1951.

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California

By Charles A Smith Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

February, 1951, Grand Jury

FILED
JULY 31, 1951
EDMUND L. SMITH, CLERK
By Maxine Lewis, Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE,

Defendants.

No. 21883 CD

[U.S.C., Title 18, Sec. 11 (1946 Ed.); U.S.C., Title 18, Sec. 371 (1948 Ed.); Section 3 of the Smith Act, 54 Stat. 671- Conspiracy to violate the Smith Act]

I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants

herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaires of said Party, knowing the purposes of the Party, and in such capacities would assume leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants;

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to, "Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said Party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California;

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at 2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

Robert B. Young, III
Foreman

Ernest A. Tolin
ERNEST A. TOLIN,
United States Attorney.

Stipulation and Order of Consolidation

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. B 438

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs. No. 13439

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs. No. 13440

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs. No. 13441

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner,

vs. No. 13442

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs. No. 13443

JAMES J. BOYLE, United States Marshal,

Respondent.

CLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for th respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District Co

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 1343

AL RICHMOND,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 1343

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 1343

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

CLETA O'CONNOR YATES,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13444-BH

ROSE CHERNIN KUSNITZ,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13445-BH

MARY BERNADETTE DOYLE,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13446-BH

ALBERT JASON LIMA,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive, and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case, and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle, No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delays the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

ERNEST A. TOLIN
United States Attorney

RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 diqqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 6th day of September, 1951.

/s/. Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 6th day of September 1951, and approved as to form.

Ben Margolis

Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By
Ben Margolis

Attorneys for remaining Petitioners

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TRinity 6011

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and
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Oakland, California
HIghtower 4-1707

Attorneys for remaining Petitioners-Appellants

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis

Ben Margolis

/s/ Daniel G. Marshall

Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis

Ben Margolis

/s/ Leo. A. Sullivan

Leo A. Sullivan

Attorneys for remaining Petitioners-
Appellants

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and
DANIEL G. MARSHALL
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Philip Marshall Connelly

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Attorneys for remaining
Petitioners

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appeal, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

DATED: September 6, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitioner

Agreed to:

United States Attorney

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Office-Supreme Court, U. S.
FILED
OCT 25 1951
CHARLES ELMORE CROPLEY

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, CLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners-Appellants,

-vs-

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 400

TRANSCRIPT OF RECORD ON APPEAL

(AL RICHMOND)

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Designation Of Record

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

AL RICHMOND

Petitioner,

v.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13437-HW

PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Al Richmond , the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of his liberty, to produce the body of your petitioner, Al Richmond before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 25, 1951, a warrant was issued by Howard V.

Calverley, United States Commissioner in the Southern District of California, pursuant to a complaint charging your petitioner and one William Schneiderman, with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

On July 26, 1951, petitioner was unlawfully arrested by agents of the Federal Bureau of Investigation who produced no warrant for arrest and stated that they needed no warrant of arrest for your petitioner although your petitioner demanded the production of a warrant of arrest; that said agents declined to state the reasons for your petitioner's arrest or the existence of any charges against petitioner or the fact that a warrant had been issued, and thereupon forcibly took petitioner into custody.

III.

Following petitioner's arrest as aforesaid and on July 26, 1951, petitioner was arraigned before United States Commissioner Francis St. J. Fox in San Francisco and by said Commissioner was ordered to be held in custody upon bail fixed by said Commissioner in the sum of $75,000, and by virtue of such order your petitioner was confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

IV:

Thereafter and on or about July 27, 1951, petitioner made application to the Honorable Louis E. Goodman, a judge of the United States District Court for the Northern District of California for a reduction of said bail. On said day the said District Judge modified the aforementioned order of the said Commissioner and did make his order fixing bail in the sum of $50,000. In fixing the said sum the District Judge rule that the narrow question before him was the amount of bail which

should be fixed pending removal to this Court where the complaint originally issued. By virtue of said order of said Judge, petitioner remained confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

V.

Thereafter, on July 28, 1951, petitioner filed a petition for writ of habeas corpus to the said Honorable Louis E. Goodman, for a reduction of bail and the said Judge, basing his ruling on the record of proceedings of July 27, 1951, denied the petition.

VI.

Upon information and belief, the United States Attorney for the Southern District of California, summoned a Grand Jury to convene on July 31, 1951, at 9 A.M. and in the space of about fifteen minutes the said Grand Jury returned the indictment herein, charging your petitioner together with the above-mentioned defendants with a conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671.

VII.

On August 1, 1951, petitioner was removed from the County Jail of the City and County of San Francisco and brought to the County of Los Angeles where petitioner was confined in the County Jail of the County of Los Angeles under the custody of the United States Marshal James J. Boyle.

VIII.

Thereafter, and on August 2, 1951, petitioner was taken before the Honorable James M. Carter, the judge of this Court before whom the indictment was returned. Upon information and belief, the true bill returned against the defendants contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were written

on a copy of the indictment with the notation of $75,000 for all defendants except the defendant William Schneiderman, where the notation was $100,000, and that these writings were unsigned. Upon arraignment before the said Judge no further reference was made to bail.

IX.

Thereafter and on August 6, 1951, petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

X.

On August 6, 1951, the aforesaid motion to fix or reduce bail came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

XI.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S.C.A. Section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XII.

That thereupon, and at the request of counsel for one of the defendants herein, Philip Marshall Connelly, the said Judge James M. Carter withheld his ruling on the said Connelly's motion to fix or reduce bail until an application could be made to the

United States Court of Appeals for the Ninth Circuit for a ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XIII.

That thereafter, the motion to fix or reduce bail on your petitioner's behalf was argued before the said Judge and on August 8, 1951, your petitioner's bail was fixed at the sum of $50,000.

XIV.

Thereafter, on August 13, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that petitioner be released from the custody of the respondent upon reasonable bail, and on the said day the writ was issued by the Honorable William C. Mathes, a Judge of this Court and made returnable before said Judge on August 15, 1951.

XV.

On August 15, 1951, the said writ came on for hearing before the said Judge William C. Mathes, and after hearing, and by order dated August 17, 1951, the said petition was dismissed and the writ discharged.

XVI.

On August 18, 1951, your petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order discharging the writ of habeas corpus.

XVII.

Thereafter, and on August 24, 1951, the United States Court of Appeals rendered its decision on the application of the defendant herein, Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter, and the said Court did hold that the aforesaid affidavit of bias and prejudice was legally

sufficient and ordered the said Judge to proceed no further respecting the said Connelly's bail proceedings or in connection with the said Connelly's prosecution under the indictment.

XVIII.

In view of the decision of the Court of Appeals, and because of the doubt created thereby as to whether the said Judge James M. Carter had the power or jurisdiction originally to fix or reduce bail for petitioner or the other petitioners herein, after the aforesaid joint affidavit of bias and prejudice was filed, the petitioner decided to withdraw the aforesaid appeal.

XIX.

On August 27, 1951, the United States Attorney for the Southern District of California, counsel for the respondent, and counsel for the petitioner stipulated in writing to dismiss the aforesaid appeal and said stipulation was filed with the clerk of the United States Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court.

XX.

On August 29, 1951, petitioner together with the other defendants has brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to the aforesaid Judge William C. Mathes.

XXI.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951, fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18, 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951, as the day for the appearance of counsel to de-

termine the date of trial which the said Judge indicated would be October 30, 1951, unless strong reason was shown to the contrary.

XXII.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail have unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XXIII.

Petitioner is advised by Counsel that under the Constitution petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXIV.

Petitioner is a naturalized citizen of the United States and has lived continuously in this country for the past 29 years, having been born in England and having first been brought to the United States at the age of three.

XXV.

Petitioner is married to a citizen of the United States and is the father of two minor children born in the United States. Petitioner lives with his said wife and children in the City and County of San Francisco, State of California, and has lived in said City and County continuously since 1937 or 1938, except for

a period of three years during which your petitioner was a member of the Armed Services of the United States in World War II and serving a portion of said period overseas.

XXVI.

Petitioner is purchasing and owns and lives in his own home in the City and County of San Francisco.

XXVII.

Petitioner has never been heretofore arrested or charged with any offense.

XXVIII.

Petitioner is employed as a newspaperman, to wit, Executive Editor of the "Daily People's World," and he earns a salary of $50.00 per week.

XXIX.

Petitioner hereby states and represents to this Court that he intends in good faith to remain and that he will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that he does not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioner believes that he is not guilty of the offense charged in the indictment and he intends to vigorously prosecute his defense. Petitioner believes that upon the trial of this indictment herein, he will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive him of liberties secured to him by the Constitution of the United States.

XXX

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XXXI

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

XXXII

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XXXIII

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XXXIV

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XXXV

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XXXVI

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XXXVII

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XXXVIII

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XXXIX

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XL

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XLI

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLII

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLIII

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLIV

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XLV

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XLVI

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

XLVII

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

131 Al Richmond

(verified September 4, 1951)

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000 reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants $5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personations and Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act #44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Juvenile Delinquency Forgery U.S. Money Order)		1	
Mailing obscene letter	10-$ 5,000	1	$ 2,500
Engage in business of purchasing spirits for resale without basic permit		2	2,500
Transport stolen motor vehicle	5- 5,000	1	
Forging and cashing Government bonds	10- 1,000	2	2,500
Theft of mail	5- 2,000	1	1,000
Forging Government Obligation	15- 5,000	1	500
Bank robbery, transporting interstate stolen money and flight to avoid prosecution	25-10,000	3	Held No Bond
Forging and uttering Government check	10- 1,000	2	1,000
Transporting stolen motor vehicle in foreign commerce	5- 5,000	1	3,000 (reduced to 2,000)
Anti-trust conspiracy to fix, determine, establish and maintain noncompetitive prices, etc. of fire extinguishers	1- 5,000	1	Own Recognizance (later 1,000)

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognizance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Rexognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongi-zance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
-			
Forging and uttering goverment checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Official asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5-10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 605; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy; Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	2,500
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - 10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of Marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj. Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - 5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to /in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - 1,000	4	Own Recognizance
Forging Government Check.	10 - 1,000	2	5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of ma il by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - $10,000	1	$1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of Marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense - kick - backs on sub-contracts	2 - 10,000	9	2,500

EXHIBIT "B"

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
112 West Ninth Street
Los Angeles 15, California
VAndike 7153
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
HIghtower 4-1707

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

AL RICHMOND,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13437-HW

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marsh for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 Nort Spring Street, Los Angeles, California, on the 6th Day of September 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody such officers or agents as may have the same for and on his behalf, the body of Al Richmond, petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respond herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

1951, by Howard V. Calverley, United States Commissioner for the Southern District of California, pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest he was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorable Francis St. J. Fox, at San Francisco, California, who then and there arraigned said petitioner and set bail in the amount of $ 75,000 - pending removal to this district. Thereafter, on or about the 27th day of July, 1951, an application was made to the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for reduction of said bail. Following a full hearing on said application, said District Judge modified the order of the Commissioner, and reduced bail of the petitioner to the sum of $50,000 pending removal of the petitioner to this district, and in default thereof ordered the petitioner committed to the custody of the United States Marshal in San Francisco, California. Thereafter, on July 28, 1951, the petitioner herein filed a petition for writ of habeas corpus, which petition was heard by the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California for the purpose of obtaining a further reduction of bail. This petition was denied.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM SCHNEIDERMAN, et al., Defendants.

No. 21883-Crim.

O R D E R

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division
600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411
Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

W. Richards,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

NO. 19437-HW

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, W. Richards, is not unlawfully imprisoned or restrained of his liberty, and his imprisonment and detention are not illegal, arbitrary or a denial of rights secured to him by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951 in the City of San Francisco, State of California, by Special Agents of the Federal Bureau of Investigation, upon a warrant issued July 25

K:MW

is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein, and on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned. On August 1, 1951, following the return of the indictment herein, the petitioner was removed from the City and County of San Francisco and brought to the County of Los Angeles, [illegible] custody was delivered to the respondent herein, James J. Boyle, United States Marshal for the Southern District of California.

V.

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request, the Order setting said matter for plea on August 20th, 1951, was vacated and the plea on said indictment was again continued, at petitioner's request, until the 22nd day of August, 1951. On August 22nd, 1951, the plea was continued to August 29th, 1951, and on August 29th, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose Court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs IX to XIX the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connell, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided August 24,1951), was rendered, Judge James M. Carter did, on the 29th day of August, 1951, disqualify himself as to both Philip Marshall Connell and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J. McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge William C. Mathes for all further proceedings. Thereafter, on the 29th day of August,1951, a motion was made before the Honorable Wm.C.Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30, 1951, reducing the amount of bail set in said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm.C.Mathes and Louis E. Goodman the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendants in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2, 1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3, 1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in said indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshal for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismissed and that the petitioner, Ali Ruhani, be remanded to respondent's custody to be dealt with according to the laws of the United States of America.

/s/ James J. Boyle
JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

/s/ James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me
this 6th day of September, 1951

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California

By /s/ Charles A. Secty Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM SCHNEIDERMAN,
DOROTHY ROSENBLUM HEALEY,
ALBERT JASON LIMA,
OLETA O'CONNOR YATES,
CARL RUDE LAMBERT,
PHILIP MARSHALL CONNELLY,
ROSE CHERNIN KUSNITZ,
AL RICHMOND, also known as
Abraham Richman,
ERNEST OTTO FOX, also known as
Ernest Otto Fuchs,
HENRY STEINBERG,
LORETTA STARVUS STACK, and
MARY BERNADETTE DOYLE,

Defendants.

No. _____ CD
(U.S.C., Title 18, Sec. 1
1946 Ed. U.S.C., Title 18
Sec. 371 [illegible] 8.) Section
of the Smith Act, 54 Stat
671 - Conspiracy to viola
the Smith Act)

I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuous thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhe WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LI OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNEL ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richma ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINB LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendant herein, unlawfully, wilfully, and knowingly did conspire with e other and with William Z. Foster, Eugene Dennis, John B. Willia son, Jacob Stackel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein and with divers other persons to the grand jury unknown, to com offenses against the United States prohibited by Section 2 of t

Smith Act 54 Stat. 671; 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume Leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants.

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to,

"Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the object thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of

the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950 WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at

2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

_____
Foreman

ERNEST A. TOLIN,
United States Attorney.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

No. 13436

JAMES J. BOYLE, United States Marshal,

Respondent.

AL RICHMOND,

Petitioner,

vs.

No. 13437

JAMES J. BOYLE, United States Marshal,

Respondent.

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

No. B 438

JAMES J. BOYLE, United States Marshal,

Respondent.

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs. No. 13439

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs. No. 13440

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs. No. 13441

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE IAMBERT,

Petitioner,

vs. No. 13442

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs. No. 13443

JAMES J. BOYLE, United States Marshal,

Respondent.

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for th respondent herein that the petitions for writs of habeas corpus in the above entitled capses shall be consolidated and treated as

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13436-BH

AL RICHMOND,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13437-BH

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13438-BH

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13439-BH

OLETA O'CONNOR YATES,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13444-BH

No. 13440-BH

ROSE CHERNIN KUSNITZ,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13445-BH

No. 13441-BH

MARY BERNADETTE DOYLE,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13446-BH

No. 13442-BH

ALBERT JASON LIMA,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13447-BH

No. 13443-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were co
solidated for hearing and the sole question for this court to de
termine in each matter is whether the bail of $50,000 is excessi
and by reason thereof petitioners are unlawfully deprived of the
liberty contrary to the provisions of the Eighth Amendment to th

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for bail in bail [illegible] would be entitled to have bail fixed in accordance with their respective abilities.

In re [illegible] ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) [illegible]: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case, and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle, No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delays the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

ERNEST A. TOLIN
United States Attorney

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Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG; OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted; that the

orders to show cause why the petitions or writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 12th day of September, 1951, and approved as to form.

Ben Margolis

Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly.

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By Ben Margolis

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Attorneys for remaining Petitioners-Appellants

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 12th day of September, 1951.

/s/ Ben Margolis

Ben Margolis

/s/ Daniel G. Marshall

Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis

Ben Margolis

/s/ Leo A. Sullivan

Leo A. Sullivan

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION; ERNEST A. TOLI UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in th record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipula- tion and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appeal, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

DATED: September 12, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitioner

Agreed to:

/s/ Ernest A. Tolin
United States Attorney

Office Su
F
OC
CHARLES

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, CLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners-Appellants,

-vs-

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 400

TRANSCRIPT OF RECORD ON APPEAL

(ERNEST OTTO FOX)

NAMES AND ADDRESSES OF COUNSEL

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Order Denying Petitions For Writs Of Habeas Corpus

Notice Of Appeal

Designation Of Record

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Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

ERNEST OTTO FOX,

Petitioner,

v.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440 PH

PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Ernest Otto Fox, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of his liberty, to produce the body of your petitioner, Ernest Otto Fox, before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 25, 1951, a warrant was issued by Howard V.

Calverley, United States Commissioner in the Southern District of California, pursuant to a complaint charging your petitioner and one William Schneiderman, with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

On July 26, 1951, petitioner was unlawfully arrested by agents of the Federal Bureau of Investigation who produced no warrant for arrest and stated that they needed no warrant of arrest for your petitioner although your petitioner demanded the production of a warrant of arrest; that said agents declined to state the reason for your petitioner's arrest or the existence of any charges against petitioner or the fact that a warrant had been issued, and thereupon forcibly took petitioner into custody.

III.

Following petitioner's arrest as aforesaid and on July 26, 1951, petitioner was arraigned before United States Commissioner Francis St. J. Fox in San Francisco and by said Commissioner was ordered to be held in custody upon bail fixed by said Commissioner in the sum of $75,000, and by virtue of such order your petitioner was confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

IV.

Thereafter and on or about July 27, 1951, petitioner made application to the Honorable Louis E. Goodman, a judge of the United States District Court for the Northern District of California for a reduction of said bail. On said day the said District Judge modified the aforementioned order of the said Commissioner and did make his order fixing bail in the sum of $50,000. In fixing the said sum the District Judge rule that the narrow question before him was the amount of bail which

should be fixed pending removal to this Court where the complaint originally issued. By virtue of said order of said Judge petitioner remained confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

V.

Thereafter, on July 28, 1951, petitioner filed a petition for writ of habeas corpus to the said Honorable Louis E. Goodman, for a reduction of bail and the said Judge, basing his ruling on the record of proceedings of July 27, 1951, denied the petition.

VI.

Upon information and belief, the United States Attorney for the Southern District of California, summoned a Grand Jury to convene on July 31, 1951, at 9 A.M. and in the space of about fifteen minutes the said Grand Jury returned the indictment herein, charging your petitioner together with the above-mentioned defendants with a conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671.

VII.

On August 1, 1951, petitioner was removed from the County Jail of the City and County of San Francisco and brought to the County of Los Angeles where petitioner was confined in the County Jail of the County of Los Angeles under the custody of the United States Marshal James J. Boyle.

VIII.

Thereafter and on August 2, 1951, petitioner was taken before the Honorable James M. Carter, the judge of this Court before whom the indictment was returned. Upon information and belief, the true bill returned against the defendants contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were writte

on a copy of the indictment with the notation of $75,000 for all defendants except the defendant William Schneiderman, where the notation was $100,000, and that these writings were unsigned. Upon arraignment before the said Judge no further reference was made to bail.

IX.

Thereafter and on August 6, 1951, petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

X.

On August 6, 1951, the aforesaid motion to fix or reduce bail came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

XI.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S.C.A. Section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XII.

That thereupon, and at the request of counsel for one of the defendants herein, Philip Marshall Connelly, the said Judge James M. Carter withheld his ruling on the said Connelly's motion to fix or reduce bail until an application could be made to the

United States Court of Appeals for the Ninth Circuit for a ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XIII.

That thereafter, the motion to fix or reduce bail on your petitioner's behalf was argued before the said Judge and on August 8, 1951, your petitioner's bail was fixed at the sum of $50,000.

XIV.

Thereafter, on August 13, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that petitioner be released from the custody of the respondent upon reasonable bail, and on the said day the writ was issued by the Honorable William C. Mathes, a Judge of this Court and made returnable before said Judge on August 15, 1951.

XV.

On August 15, 1951, the said writ came on for hearing before the said Judge William C. Mathes, and after hearing, and by order dated August 17, 1951, the said petition was dismissed and the writ discharged.

XVI.

On August 18, 1951, your petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order discharging the writ of habeas corpus.

XVII.

Thereafter, and on August 24, 1951, the United States Court of Appeals rendered its decision on the application of the defendant herein, Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter, and the said Court did hold that the aforesaid affidavit of bias and prejudice was legally

sufficient and ordered the said Judge to proceed no further respecting the said Connelly's bail proceedings or in connection with the said Connelly's prosecution under the indictment.

XVIII.

In view of the decision of the Court of Appeals, and because of the doubt created thereby as to whether the said Judge James M. Carter had the power or jurisdiction originally to fix or reduce bail for petitioner or the other petitioners herein, after the aforesaid joint affidavit of bias and prejudice was filed, the petitioner decided to withdraw the aforesaid appeal.

XIX.

On August 27, 1951, the United States Attorney for the Southern District of California, counsel for the respondent, and counsel for the petitioner stipulated in writing to dismiss the aforesaid appeal and said stipulation was filed with the clerk of the United States Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court.

XX.

On August 29, 1951, petitioner together with the other defendants has brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to the aforesaid Judge William C. Mathes.

XXI.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951, fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18, 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951, as the day for the appearance of counsel to de-

termine the date of trial which the said Judge indicated would be October 30, 1951, unless strong reason was shown to the contrary.

XXII.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail have unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XXIII.

Petitioner is advised by Counsel that under the Constitution, petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXIV.

Petitioner was born in Germany and brought to this country at the age of four years, and has lived and resided in this country for forty-two years, being now 46 years of age. He has worked as a seaman, warehouse worker and labor organizer.

XXV.

Petitioner is and has been for the past fifteen years mar

to a citizen of the United States, and has resided with his wife in San Francisco, California, in the same house for the past six years. Petitioner's income is $40 per week and his wife's income is $60 to $65 per week.

XXVI.

On August 1, 1950, petitioner was arrested upon a warrant for his deportation, charging in essence that he was an alien who, after lawful entry into the United States, had become a member of and affiliated with an organization that advocated and taught the overthrow by force and violence of the government of the United States, to-wit, the Communist Party of the United States of America. On August 2, 1950, petitioner was released upon giving bond in the sum of $5,000 and thereafter complied with all the terms and conditions of said release upon bond. Notwithstanding, on or about October 22, 1950, without any cause or excuse, petitioner was again seized and imprisoned by the Immigration authorities of the Department of Justice for and in connection with the same grounds set forth as above, in the said deportation warrant of arrest, and was held without bail.

XXVII.

Upon application for a petition of habeas corpus, and upon hearing thereof, petitioner was ordered released on bail of $5,000 by order of the Honorable Michael J. Roche, Chief Judge, District Court of the United States for the Northern District of California, in proceedings numbered 30115 in said Court. He supplied such bail and ever since, until his arrest on July 26, 1951, as aforesaid, has been at large on said bail, and has faithfully fulfilled all the requirements and obligations, and has complied with all the terms and conditions, of his said release on bond, and has attended at all such times and places as petitioner has been ordered to

attend in proceedings before said Immigration authorities whic have subsequently taken place.

XXVIII.

Petitioner hereby states and represents to this Court tha he intends in good faith to remain and that he will remain wit the jurisdiction of this Court at all times throughout the pro cution of the proceedings under the indictment and that he doe not intend to and will not at any time during such proceeding leave the jurisdiction of this Court without the approval of t Court. Petitioner believes that he is not guilty of the offen charged in the indictment and he intends to vigorously prosecu his defense. Petitioner believes that upon the trial of this dictment herein, he will be entitled to a verdict of not guil and that a conviction upon the allegations thereof would depri him of liberties secured to him by the Constitution of the Uni States.

XXIX

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XXX

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires full time preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnes provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

XXXI

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XXXII

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace; Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XXXIII

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in orde to determine what related material is available to them for the purposes mentioned above.

XXXIV

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XXXV

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XXXVI

In addition to the books, records and documents offered by both sides in the case of United States vs Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XXX VII

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XXX VIII

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XXX IX

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XL

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLI

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLII

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLIII

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday or each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XLIV

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XLV

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

XLVI

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

(Verified Sept. 4, 1951)

s/ Ernest Otto Fax

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000 reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants $5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 30% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personationsand Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code: (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act #44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Juvenile Delinquency (Forgery U.S. Money Order)		1	
Mailing obscene letter	10-$ 5,000	1	$ 2,500
Engage in business of purchasing spirits for resale without basic permit		2	2,500
Transport stolen motor vehicle	5- 5,000	1	
Forging and cashing Government bonds	10- 1,000	2	2,500
Theft of mail	5- 2,000	1	1,000
Forging Government Obligation	15- 5,000	1	500
Bank robbery, transporting interstate stolen money and flight to avoid prosecution	25-10,000	3	Held No Bond
Forging and uttering Government check	10- 1,000	2	1,000
Transporting stolen motor vehicle in foreign commerce	5- 5,000	1	3,000 (reduced to 2,000)
Anti-trust conspiracy to fix, determine, establish and maintain noncompetitive prices, etc. of fire extinguishers	1- 5,000	1	Own Recognizance (later 1,000)

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognizance (late 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Rexognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongi-zance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering goverment checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Officials asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000.
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5- 10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 605; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy; Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	2,500
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail freud	5 - 10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj. Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - 5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10 - 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	3 - 1,000	4	Own Recognizance
Forging Government Check	10 - 1,000	2	5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failura to be inducted	.5 - $10,000	1	1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizanc then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of Marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense - kick - backs on sub-contracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
WILLIAM SCHNEIDERMAN, et al.,
Defendants.

No. 21883-Crim.

O R D E R

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
112 West Ninth Street
Los Angeles 15, California
VAndike 7153
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
HIghtower 4-1707

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440-PH

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marsh for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 Nort Spring Street, Los Angeles, California, on the 6th Day of September 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody such officers or agents as may have the same for and on his behalf, the body of ERNEST OTTO FOX, petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respon herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal;

Respondent.

NO. 13040-PH

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, Ernest Otto Fox, is not unlawfully imprisoned or restrained of his liberty, and his imprisonment and detention are not illegal, arbitrary or a denial of rights secured to him by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951, in the City of San Francisco, State of California, by Special Agents of the Federal Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V. Calverley, United States Commissioner for the Southern District of California

pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest he was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorable Francis St. J. Fox, at San Francisco, California, who then and there arraigned said petitioner and set bail in the amount of $75,000 pending removal to this district. Thereafter, on or about the 27th day of July, 1951, an application was made to the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern Dis trict of California, for reduction of said bail. Following a full hearing on said application, said District Judge modifie the order of the Commissioner, and reduced bail of the petitioner t the sum of $50,000 pending removal of the petitioner to this district, and in default thereof ordered the petitioner committed to the custody of the United States Marshall in San Francisco, California. Thereafter, on July 28, 1951, the petitioner herein filed a petition for writ of habeas corpus, which petition was heard by the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for the purpose of obtaining a further reduction of bail. This petition was denied.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned. On August 1, 1951, following the return of the indictment herein, the petitioner was removed from the City and County of San Francisco and brought to the County of Los Angeles, where

his custody was delivered to the respondent herein, James J. Boyle, United States Marshal for the Southern District of California.

V

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request, the Order setting said matter for plea on August 20th, 1951, was vacated and the plea on said indictment was again continued, at petitioner's request, until the 22nd day of August, 1951. On August 22nd, 1951, the plea was continued to August 29th, 1951, and on August 29th, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose Court the case was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs IX to XIX of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided August 24, 1951), was rendered, Judge James M. Carter did, on the 29th day of August, 1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J. McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August, 1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30, 1951, reducing the amount of bail set on said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm. C. Mathes and Louis E. Goodman the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendants

in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2, 1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3, 1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in s aid indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshall for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismiss ed and that the petitioner, Ernest Otto Fox, be remaded to respondent's custody to be dealt with according to the laws of the United States of America.

/s/ James J. Boyle
JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

/s/ James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me
this 6th day of September, 1951

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California

By /s/ Charles A. Secty Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, Defendants.	No. _____ CD (U.S.C., Title 18, Sec. 11 1946 Ed. U.S.C., Title 18, Sec. 371948 Ed.) Section 3 of the Smith Act, 54 Stat. 671 - Conspiracy to violate the Smith Act) I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously, thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stackel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the

Smith Act 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume Leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants.

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to,

"Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the object thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of

the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE BOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN [illegible], a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950 WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9. On or about February 15, 1950, MARY BERNADETTE BOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at

2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDY LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

Foreman

ERNEST A. TOLIN,
United States Attorney.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13 438

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs. No. 13439

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs. No. 13440

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs. No. 13441

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner,

vs. No. 13442

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs. No. 13443

JAMES J. BOYLE, United States Marshal,

Respondent.

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13436-BH

AL RICHMOND,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13437-BH

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13438-BH

DOROTHY ROSENBLUM HEALEY,

Petitioner, No. 13439-BH

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner, No. 13440-BH

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner, No. 13441-BH

vs.

JAMES J. BOYLE; United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner, No. 13442-BH

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner, No. 13443-BH

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

OLETA O'CONNOR YATES,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal;

Respondent.

No. 13444-BH

ROSE CHERNIN KUSNITZ,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13445-BH

MARY BERNADETTE DOYLE,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13446-BH

ALBERT JASON LIMA,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive, and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly changed. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case, and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle, No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delay the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED.

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 12th day of September, 1951, and approved as to form.

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 12th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN, UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appeal, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

DATED: September 12, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitioner

Agreed to:

/s/ Ernest A. Tolin
United States Attorney

Office-Supreme Court, U. S.
FILED
OCT 25 1951
CHARLES ELMORE CROPLEY

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners-Appellants,

-vs-

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 400

TRANSCRIPT OF RECORD ON APPEAL

(WILLIAM SCHNEIDERMAN)

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Notice Of Appeal

Designation Of Record

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

WILLIAM SCHNEIDERMAN Petitioner, v. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13441 c PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

William Schneiderman, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of h**is** liberty, to produce the body of your petitioner, **William Schneiderman** before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 25, 1951, a warrant was issued by Howard V.

Calverley, United States Commissioner for the Southern District of California pursuant to a complaint charging petitioner with conspiring with others to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

Following petitioner's arrest on July 26, 1951, petitioner was arraigned before United States Commissioner McDonough and by said Commissioner was ordered to be held in custody upon bail fixed by said Commissioner in the sum of $100,000. At the said time when the said Commissioner fixed bail, no opportunity was afforded petitioner to speak, and petitioner had no attorney present. Thereupon, petitioner was remanded in the custody of the United States Marshal for the Southern District of New York and confined in the Federal House of Detention in the City and County of New York.

III.

On the next day, July 27, 1951, petitioner appeared again before the aforesaid United States Commissioner and for the first time had counsel to represent him. The said Commissioner again fixed bail in the same aforesaid amount of $100,000 and at the Government's request, removal proceedings were adjourned until August 6, 1951, before which time the Government indicated an indictment would be returned.

IV.

On August 6, 1951, petitioner appeared before United States Commission Platt for the Southern District of New York where petitioner's counsel again requested a reduction of bail. Bail was reduced by the said Commissioner to the sum of $75,000 and, since petitioner did not contest removal, petitioner's removal to the Southern District of California was ordered by the said Commissioner. Since petitioner was wholly unable to furnish the sum of $75,000 as bail, petitioner continued confined

in the Federal House of Detention in the custody of the United States Marshal.

V.

On August 7, 1951, petitioner appeared before the Honorable Edward J. Dimock, a judge of the United States District Court for the Southern District of New York and made application through his counsel for reduction in bail. Thereupon, and on said day, the said District Judge modified the aforementioned order of the said Commissioner and did make his order fixing bail in the sum of $50,000. By virtue of said order of said Judge, and since peititioner did not possess the financial ability to furnish the said bail, petitioner remained confined in the Federal House of Detention under the custody of the United States Marshal.

VI.

On August 14, 1951, petitioner was removed from the Federal House of Detention in New York and under the custody of two deputy marshals was taken by train to Los Angeles where petitioner arrived on August 17, 1951. Thereupon, petitioner was brought before the Honorable James M. Carter, a United States District Judge for the Southern District of California, and arraigned. No reference was made to bail at the time of petitioner's arraignment. Petitioner was remanded to the custody of the United States Marshal for the Southern District of California and confined in the County Jail of Los Angeles.

VII.

On August 29, 1951, petitioner together with the other defendants was brought before the said James M. Carter, who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to ~~the aforesaid~~ Judge William C. Mathes.

VIII.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951 fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18, 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951 as the day for the appearance of counsel to determine the date of trial which the said Judge indicated would be October 30, 1951 unless strong reason was shown to the contrary.

IX.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail and unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

X.

Petitioner is advised by counsel that under the Constitution, petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XI.

Petitioner is a naturalized citizen of the United States. Petitioner was brought to this country at the age of about three years. Petitioner is a graduate of Polytechnic Night

High School in Los Angeles and attended the University of California at Los Angeles for two years before he was compelled to leave college in order to earn his livelihood. Since 1935 petitioner has resided continuously in the State of California. Petitioner is married and has a daughter aged seven. The residence of petitioner and his immediate family is in San Francisco. Petitioner's mother, three brothers and a sister all reside in Los Angeles. Petitioner's income is $50.00 per week plus expenses. Petitioner has no other assets, real or personal.

XII.

In 1939 proceedings were instituted by the Government to cancel the certificate of citizenship granted to petitioner in 1927. It was charged in the complaint that petitioner had illegally procured the said certificate in that petitioner had not five years preceding his naturalization behaved as a person attached to the principles of the Constitution of the United States, but had in fact advised, advocated and taught the forcible overthrow of the Government and been a member of organizations which so advised, advocated and taught. The District Court for the Northern District of California entered judgment setting aside petitioner's certificate of naturalization and that judgment was affirmed by the Court of Appeals. On certiorari to the United States Supreme Court, the aforesaid judgment was reversed, the Supreme Court holding that the Government had not established that petitioner had obtained his citizenship illegally.

XIII.

For a period of a few days before his arrest Petitioner was followed and trailed by F.B.I. agents. By reason of those facts and by reason of the wide publicity given over a long period of time by the United States Department of Justice of its intention to prosecute persons alleged to be leading officers of the

Communist Party, and because of constant publicity over a long period of time alleging that petitioner was a leading official of the Communist Party, petitioner had been expecting for some time that he would be arrested and charged with the violation of the Smith Act. At all times, it has been petitioner intention, in the event of such charge and such arrest, to defend himself in court and to do everything possible to have the proceedings dismissed or to secure a "not guilty" verdict.

XIV

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XV

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

XVI

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XVII

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 109 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XVIII

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XIX

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XX

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XXI

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XXII

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XXIII

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XXIV

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XXV

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XXVI

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XXVII

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XXVIII

With respect to the said Daily Peopleds World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XXIX

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XXX

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

XXXI

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

(Verified September 4, 1951) /s/ William Schneiderman

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000 reduced to 5,00
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants

$5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, W nstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy.	10-10,000	4	3,000
Forgery, personation and Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act *44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

	CHARGE	PENALTY	COUNTS	BAIL
2	Juvenile Delinquency			
3	Forgery U.S. Money Order)		1	
4	Mailing obscene letter	10-$ 5,000	1	$ 2,500
5	Engage in business of			
6	purchasing spirits for			
7	resale without basic			
8	permit		2	2,500
9	Transport stolen motor			
10	vehicle	5- 5,000	1	
11	Forging and cashing			
12	Government bonds	10- 1,000	2	2,500
13	Theft of mail	5- 2,000	1	1,000
14	Forging Government			
15	Obligation	15- 5,000	1	500
16	Bank robbery, transport-			
17	ing interstate stolen			
18	money and flight to			
19	avoid prosecution	25-10,000	3	Held No Bond
20	Forging and uttering			
21	Government check	10- 1,000	2	1,000
22	Transporting stolen motor			
23	vehicle in foreign			
24	commerce	5- 5,000	1	3,000 (reduced to 2,000)
25				
26	Anti-trust conspiracy to			
27	fix, determine, establish			
28	and maintain noncompetitive			
29	prices, etc.. of fire			
30	extinguishers	1- 5,000	1	Own Recogni- zance (later 1,000)
31				
32				

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognizance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Recognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongi-zance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering goverment checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Official asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5- 10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 605; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy; Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	1	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	2,500
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - 10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj. Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - $5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - 1,000	4	Own Recognizance
Forging Government Check	10 - 1,000	2	5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of ma il by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - $10,000	1	$1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of arijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense - kick - backs on sub-contracts	2 - [illegible],000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM SCHNEIDERMAN, et al.,

Defendants.

No. 21883-Crim.

O R D E R

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters; and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
212 West Ninth Street
Los Angeles 15, California
VAndike 7153
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
HIghtower 4-1707

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WILLIAM SCHNEIDERMAN,
Petitioner,
vs.
JAMES J. BOYLE, United States Marshal,
Respondent.

No. 13441-C

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marsh for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 Nort Spring Street, Los Angeles, California, on the 6th Day of September 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody such officers or agents as may have the same for and on his behalf, the body of WILLIAM SCHNEIDERMAN, petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respondent herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison
JUDGE OF THE U.S. DISTRICT COURT

ERNEST A. TOLIN
United States Attorney

RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WILLIAM SCHNEIDERMAN, Petitioner, vs. JAMES J. BOYLE, UNITED States Marshall, Respondent.	No. 13441-C RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, William Schneiderman, is not unlawfully imprisoned or restrained of his liberty, and his imprisonment and detention are not illegal, arbitrary or a denial of rights secured to him by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951, in the City of New York, State of New York, by Special Agents of the Federal Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V. Calverley, United States Commissioner for the Southern District of California, pursuant to a verified complaint charging the petitioner and others with conspiracy to commit

offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

Following said petitioner's arrest he was taken without delay on July 26, 1951, before United States Commissioner McDonough, the nearest United States Commissioner, who then and there arraigned said petitioner and set bail in the amount of $100,000 pending removal to this district. On July 27, 1951, the petitioner again appeared before United States Commissioner McDonough and the bail of petitioner was continued in the amount of $100,000 pending removal proceedings. On August 6, 1951, petitioner appeared before United States Commissioner Platt for the Southern District of New York, at which time petitioner's bail was reduced to the sum of $75,000. On August 7, 1951, petitioner appeared before the Honorable Edward J. Dimock, Judge of the United States District Court for the Southern District of New York, and at that time bail for the petitioner was reduced to the sum of $50,000 pending removal to this district, and the petitioner was then ordered removed to this district. On August 14, 1951, petitioner was removed from the District of New York by Deputy United States Marshals and was delivered to your respondent on August 17, 1951. On the same date petitioner was arraigned before the Honorable James M. Carter, United States District Judge for the Southern District of California, and at the request of petitioner plea was continued until the 29th day of August, 1951. On August 29, 1951, the petitioner herein entered a plea of not guilty before the Honorable William C. Mathes, Judge of the District Court for the Southern District of California, to whose court the cause had been transferred for all further proceedings.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $100,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M.

Carter, before whom the said indictment was returned.

V

Following the opinion rendered by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, Petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, Respondents (No. 13053, decided August 24, 1951), Judge James M. Carter did, on the 29th day of August, 1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J. McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August, 1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30, 1951, reducing the amount of bail set on said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm. C. Mathes and Louis E. Goodman the same matters were rais ed as are raised in the said petition, and said matters have already been litigated.

VI

That the order of said Judge Wm. C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge Wm. C. Mathes.

VII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendants in the case of United States v. Dennis, et al., who were convicted in the

Southern Dis trict of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2, 1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3, 1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in said indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

VIII

That in none of the cases mentioned in Exhibits "A" and "B" of the petition herein, save and except the two New York cas es of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE the respondent, James J. Boyle, United States Marshal for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismissed and that the petitioner, William Schneiderman, be remanded to respondent's custody to be dealt with according to the laws of the United States of America.

/s/ JAMES J. BOYLE
JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

/s/ James J. Boyle
JAMES J. BOYLE,

SUBSCRIBED and SWORN to before me
this 6th day of September, 1951

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California

By /s/ Charles A. Secty Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, Defendants.	No. _____ CD (U.S.C., Title 18, Sec. 11 1946 Ed. U.S.C., Title 18, Sec. 371948 Ed.) Section 3 of the Smith Act, 54 Stat. 671 - Conspiracy to violate the Smith Act) I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously, thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stackel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the

Smith Act 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants.

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to,

"Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of

the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950 WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at

2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

_____
Foreman

ERNEST A. TOLIN,
United States Attorney.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. B 438

DOROTHY ROSENBLUM HEALEY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13439
ERNEST OTTO FOX, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13440
WILLIAM SCHNEIDERMAN, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13441
CARL RUDE IAMBERT, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13442
HENRY STEINBERG, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13443

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District Cou

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13436-BH

AL RICHMOND,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13437-BH

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13438-BH

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13439-BH

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440-BH

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13441-BH

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13442-BH

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443-BH

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444-BH
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445-BH
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446-BH
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive, and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case, and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle, No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delays the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

ERNEST A. TOLIN
United States Attorney

RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

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Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30; 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments; and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 12th day of September, 1951, and approved as to form.

Ben Margolis

Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

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By
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Attorneys for remaining Petitioners-Appellants

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 12th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

Nos. 13436/13447

DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN, UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appe l, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

D TED: September 12, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitione:

Agreed to:

/s/ Ernest A. Tolin
United States Attorney

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IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDY LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, -vs- JAMES J. BOYLE, United States Marshal, Respondent.	No.

TRANSCRIPT OF RECORD ON APPEAL

(HENRY STEINBERG)

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

HENRY STEINBERG

Petitioner,

v.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443-PH

PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Henry Steinberg, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of his liberty, to produce the body of your petitioner, Henry Steinberg before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 26, 1951, your petitioner was arrested at his home

in the city of Los Angeles, County of Los Angeles, State of California, upon a warrant issued July 25, 1951 by Howard V. Calverley, United States Commissioner in the Southern District of California, pursuant to a complaint charging your petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

Following petitioner's arrest and on July 26, 1951, your petitioner was arraigned before said United States Commissioner and by said Commissioner was ordered to be held in the custody of the respondent herein upon bail fixed by said Commissioner in the sum of $75,000 and by virtue of such order your petitioner was confined in the County Jail of the County of Los Angeles in the custody of said respondent on said day and where petitioner has continuously remained until the present time.

III.

Thereafter and on or about July 27, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that your petitioner be released from the custody of the respondent upon reasonable bail in order that petitioner might properly prepare petitioner's defense and because the fixing of excessive bail by the United States Commissioner constituted a violation of the rights guaranteed to him by the Constitution of the United States.

IV.

An order to show cause why the said petition for writ of habeas corpus should not be granted was signed by Honorable Leon R. Yankwich, a judge of this Court on July 27, 1951 and made returnable before said Court on July 31, 1951 at 10 A.M.

V.

Upon information and belief, the United States Attorney summoned the Grand Jury to convene on July 31, 1951 at 9 A.M. and

in the space of about fifteen minutes, the said Grand Jury returned the indictment herein charging your petitioner together with eleven other named defendants with conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671.

VI.

That on July 31, 1951 when your petitioner's petition for writ of habeas corpus came on for hearing, the Court was informed by the United States Attorney that an indictment had been returned and that for the aforesaid reason, the hearing on the petition for writ of habeas corpus before the Court had become moot, and that thereupon the Court discharged the order to show cause why the petition for writ of habeas corpus should not be granted.

VII.

Thereupon, and on the same day, your petitioner was taken before the Honorable James M. Carter, a judge of this Court before whom the indictment was returned and the said Court then announced that it was fixing bail in an amount recommended by the Grand Jury. Upon information and belief, the true bill returned against the defendants including your petitioner contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were written on a copy of the indictment with the notation of $75,000 for all defendants except the defendant, William Schneiderman, where the notation was $100,000, and that these writings were unsigned.

VIII.

Thereafter, and on August 6, 1951, your petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

IX.

On August 6, 1951, the aforesaid motion to fix or reduce bail

came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

X.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S. C.A. section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XI.

That thereupon, and at the request of counsel for one of the defendants herein, Philip Marshall Connelly, the said Judge James M. Carter withheld his ruling on the said Connelly's motion to fix or reduce bail until an application could be made to the United States Court of Appeals for the Ninth Circuit for a ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XII.

That thereafter, the motion to fix or reduce bail on your petitioner's behalf was argued before the said Judge and on August 8, 1951 your petitioner's bail was fixed at the sum of $50,000.

XIII.

Thereafter, on August 13, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that petitioner be released from the custody of the respondent upon reasonable bail, and on the said day the writ was issued by the Honorable William C. Mathes, a Judge of this Court and made returnable before said Judge on August 15, 1951.

XIV.

On August 15, 1951 the said writ came on for hearing before the said Judge William C. Mathes, and after hearing, and by order dated August 17, 1951, the said petition was dismissed and the writ discharged.

XV.

On August 18, 1951, your petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order discharging the writ of habeas corpus.

XVI.

Thereafter, and on August 24, 1951, the United States Court of Appeals rendered its decision on the application of the defendant herein, Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter, and the said Court did hold that the aforesaid affidavit of bias and prejudice was legally sufficient and ordered the said Judge to proceed no further respecting the said Connelly's bail proceedings or in connection with the said Connelly's prosecution under the indictment.

XVII.

In view of the decision of the Court of Appeals, and because of the doubt created thereby as to whether the said Judge James M. Carter had the power or jurisdiction originally to fix or reduce bail for petitioner or the other petitioners herein, after the aforesaid joint affidavit of bias and prejudice was filed, the petitioner decided to withdraw the aforesaid appeal.

XVIII.

On August 27, 1951, the United States Attorney for the Southern District of California, counsel for the respondent, and counsel for the petitioner stipulated in writing to dismiss the aforesaid appeal and said stipulation was filed with the clerk of the United States Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court.

XIX.

Thereafter, and on August 29, 1951, the petitioner together with the other defendants were brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to the aforesaid Judge William C. Mathes.

XX.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951 fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951 as the day for the appearance of counsel to determine the date of trial which the said Judge indicated would be October 30, 1951 unless strong reason was shown to the contrary.

XXI.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail and unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XXII.

Petitioner is advised by Counsel that under the Constitution, petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXIII.

Petitioner was born in St. Louis, Missouri on August 12, 1912. Except for the time that he was in service overseas as hereinafter set forth, petitioner has been continuously a resident of the United States since the time of his birth.

XXIV.

Petitioner owns his own home, located at 4416 Comly Street, Los Angeles 63, in joint custody with his wife. He has no interest in any other real property.

XXV.

Petitioner has lived in Los Angeles continuously since 1936, except for a period of two years, from 1944 to 1946, during which period he was a member of the Armed Forces of the United States, to-wit, the Army, and during which period he served overseas in Okinawa. At the end of said period petitioner was honorably discharged as a corporal. During his service petitioner served as a chaplain's assistant.

XXVI.

During his residence in Los Angeles, petitioner has worked at the Vernon Canning Company, which was engaged in work for the defense effort, during which employment he was a member of the Teamsters Union, Local 585, AFL, from which union petitioner now holds a withdrawal card; petitioner has been self-employed as a salvage salesman of railroad material and has been a clerk and driver for a grocery store.

XXVII.

Prior to coming to Los Angeles in 1936 petitioner worked as a newsboy in St. Louis, Missouri for six years, to-wit, the period from 1930 to 1936.

XXVIII.

Petitioner is a graduate of Central High School, St. Louis, Missouri, and lived in St. Louis from the time of his birth until

he left for California in 1936.

XXIX.

In 1938 petitioner was married to Bessie Grossman in Los Angeles, to whom he is still married. There are four children issue of said marriage, Judith, age four; Susan and Myra, twins, age 9, and Barbara, age eleven, all of whom are living with petitioner and his wife and are solely dependent upon petitioner for support.

XXX.

Petitioner has lived on the east side of Los Angeles for approximately fifteen years, to-wit, the entire period of his residence in Los Angeles, California. Petitioner has run for public office four times, to-wit, Assemblyman, 1939; Member of Board of Education, 1949 and 1951; and County Assessor, 1950; he is still an active member of PTA in the City Terrace area of Los Angeles, and during the entire period of his residence in Los Angeles petitioner has been active in many community activities involving support of an opposition to legislation and other matters of public interest; during the second World War petitioner was a leader in his community in the sale of War Bonds and other war activities; he has donated blood seven times before going into the Armed Services in 1944.

XXXI.

Petitioner has one sister, living in the Boyle Heights area of Los Angeles, California, and his mother, Mrs. Esther Steinberg, aged sixty-five, is also living in Los Angeles, California. Petitioner's mother has high blood pressure by reason of which she has had to stop work; petitioner and his mother are very close and his imprisonment and inability to see his mother would certainly adversely affect her health.

XXXII.

Petitioner is presently earning the sum of $58.50 per week,

upon which sum his wife and children are entirely dependent for support. Aside from his home, which petitioner owns as aforesaid and an automobile, he has no property, funds or assets of any kind whatsoever.

XXXIII.

On Wednesday, July 25, 1951, petitioner was openly trailed all day by three carloads of FBI men. During that day he drove with his wife and children to a fiesta, and during that trip he called his wife's attention to the fact that they were obviously being trailed. Following the fiesta petitioner was trailed to th Belvedere Playground, to an ice cream parlor, to his mother's home, and finally to his own home at 11 P. M. Petitioner went to bed and woke up at 8 A.M. the next day. For a long period of time there have been public announcements of contemplated prosecution against persons alleged to be officials of the Communist Party; during this period of time petitioner has been frequently and publicly alleged by various government officials, including representatives of the United States Attorney's office, to be a leading official of the Communist Party of Los Angeles County; for a long period of time he has had reason to believe, and has believed, that he would probably be prosecuted for violation of Section 2 of the Smith Act in accordance with the threats publicl made, which threats are referred to above; knowing full well of the oncoming prosecutions, he has never intended to, and never has, made any attempt to leave the area, to avoid detection or to avoid arrest; at all times petitioner has intended to be present and defend himself in a trial in the event of any such prosecutio all as more fully set forth below.

XXXIV.

In 1948 petitioner was charged with criminal and civil contempt of court in the within Court and was convicted on that charge. Both before trial and after trial pending appeal he was

released on bail in the sum of $500. On his trial petitioner was sentenced to imprisonment for a period of one year, and it was pending appeal on this judgment that he was released on bail in the aforesaid sum. At all times during the said proceedings while petitioner was on bail, which to his recollection was for a period of more than one year, he always responded to the orders of the Court requiring him to appear. On appeal his conviction was reversed and bail was exonerated.

XXXV.

A County ordinance directed at members of the Communist Party, requiring registration, was submitted to the County Council. Petitioner appeared before the Board of Supervisors of the County in opposition to said legislation, and it was reported in the press that he had appeared before the Board of Supervisors and had spoken in opposition to the legislation as the Legislative Director of the Communist Party; the aforesaid legislation was adopted, and although he had every reason to believe that he would be among the first to be arrested for alleged violation of that ordinance, petitioner neither left the area nor attempted to do anything to avoid arrest. Petitioner was arrested for violation of that ordinance and was released on $500 bail. Upon a motion to dismiss the complaint the ordinance was held unconstitutional, the case was dismissed and his bail was exonerated. During the period, which petitioner recalls to be several months and while he was out on bail, he responded to all orders of the Court requiring him to appear in the aforesaid proceedings.

XXXVI.

Petitioner hereby states and represents to this Court that he intends in good faith to remain and that he will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that he does not intend to and will not at any time during such proceedings

leave the jurisdiction of this Court without the approval of the Court. Petitioner believes that he is not guilty of the offense charged in the indictment and he intends to vigorously prosecute his defense. Petitioner believes that upon the trial of this indictment herein, he will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive him of liberties secured to him by the Constitution of the United States.

XXXVII.

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XXXVIII.

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XL

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XLI

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XLII

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XLIII

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XLIV

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XLV

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XLVI

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XLVII

The tremendous task of preparation would present many proble even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings present a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis o new conditions and new experiences throughout the world. Leninis is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XLVIII

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLIX

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

L

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

LI

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

LII

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

LIII

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

LIV

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ, and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

Carl Henry Steinberg

(verified September 4, 1951)

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000 reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants

$5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos. 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personationsand Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act *44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Juvenile Delinquency (Forgery U.S. Money Order)		1	
Mailing obscene letter	10-$ 5,000	1	$ 2,500
Engage in business of purchasing spirits for resale without basic permit		2	2,500
Transport stolen motor vehicle	5- 5,000	1	
Forging and cashing Government bonds	10- 1,000	2	2,500
Theft of mail	5- 2,000	1	1,000
Forging Government Obligation	15- 5,000	1	500
Bank robbery, transporting interstate stolen money and flight to avoid prosecution	25-10,000	3	Held No Bond
Forging and uttering Government check	10- 1,000	2	1,000
Transporting stolen motor vehicle in foreign commerce	5- 5,000	1	3,000 (reduced to 2,000)
Anti-trust conspiracy to fix, determine, establish and maintain noncompetitive prices, etc. of fire extinguishers	1- 5,000	1	Own Recognizance (later 1,000)

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognizance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Recognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongi-zance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering government checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Official asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5- 10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 633; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interatate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy; Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	Own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	$2,500
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - 10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of Marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj. Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - 5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	4,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - $ 1,000	4	Own Recognizance
Forging Government Check	10 - 1,000	2	$ 5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - $10,000	1	$1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500.
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of Marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense - kick - backs on sub-contracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
WILLIAM SCHNEIDERMAN, et al.,
Defendants.

No. 21883-Crim.

O R D E R

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so wonking on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
212 West Ninth Street
Los Angeles 15, California
VAndike 7153
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
HIghtower 4-1707

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443-PH

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marsh for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 Nort Spring Street, Los Angeles, California, on the 6th Day of September 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody such officers or agents as may have the same for and on his behalf, the body of HENRY STEINBERG, petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respondent herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

[redacted],

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

NO. [redacted]

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, Henry Steinberg, is not unlawfully imprisoned or restrained of his liberty, and his imprisonment and detention are not illegal, arbitrary or a denial of rights secured to him by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951, in the City of Los Angeles, State of California, by Special Agents of the Federal Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V. Calverley, United States Commissioner for the Southern District of California,

:MW

pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorable Howard V. Calverley, at Los Angeles, California, who then and there arraigned said petitioner and continued the matter to August 9, 1951 at 10:00 a.m. for preliminary examination and set bail in the amount of $75,000 pending said preliminary examination, and in default thereof ordered said petitioner committed to the custody of this respondent.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned.

V

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request, the order setting said matter for plea on August 20, 1951, was vacated and the plea on said indictment was again continued until the 22nd day of August, 1951. On August 22, 1951, the plea was continued at petitioner's request to August 29, 1951, and on August 29, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs VIII to XVIII of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided August 24,1951), was rendered, Judge James M. Carter did, on the 29th day of August,1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J.McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August,1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30,1951, reducing the amount of bail set on said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm. C. Mathes ~~and Louis E. Goodman~~ the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendants

in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2,1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3,1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. (The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in said indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.)

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshal for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismissed and that the petitioner, Henry Steinberg, be remanded to respondent's custody to be dealt with according to the laws of the United States of America.

James J. Boyle

JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me this 10th day of September, 1951.

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California

By Charles A. Sutton Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

February, 1951, Grand Jury

FILED
JULY 31, 1951
EDMUND L. SMITH, CLERK
By Maxine Lewis, Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE,

Defendants.

No. 21883 CD

[U.S.C., Title 18, Sec. 11 (1946 Ed.); U.S.C., Title 18, Sec. 371 (1948 Ed.); Section 3 of the Smith Act, 54 Stat. 671- Conspiracy to violate the Smith Act]

I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants

EXHIBIT A

herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaires of said Party, knowing the purposes of the Party, and in such capacities would assume leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants;

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to, "Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said Party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California;

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at 2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

Robert B. Young, III
Foreman

Ernest A. Tolin
ERNEST A. TOLIN,
United States Attorney.

Stipulation and Order of Consolidation

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. B 438

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs. No. 13439

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs. No. 13440

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs. No. 13441

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner,

vs. No. 13442

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs. No. 13443

JAMES J. BOYLE, United States Marshal,

Respondent.

CLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein, that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District Cour

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13436-BH

AL RICHMOND,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13437-BH

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13438-BH

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13439-BH

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440-BH

WILLIAM SCHNEIDERMAN,

Petitioner,

vs

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13441-BH

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13442-BH

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443-BH

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444-BH
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445-BH
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446-BH
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive, and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case, and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle, No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delays the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 6th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 6th day of September 1951, and approved as to form.

Ben Margolis

Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

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By
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Attorneys for remaining Petitioners-Appellants

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

Nos. 13436/13447

DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appeal, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

DATED: September 6, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitioners

Agreed to:

United States Attorney

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Office-Supreme
FILE
OCT 25
CHARLES ELMORE

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDY LAMBERT, HENRY STEINBERG, CLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners-Appellants,

-vs-

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 400

TRANSCRIPT OF RECORD ON APPEAL

(ROSE CHERNIN KUSNITZ)

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Notice Of Appeal

Designation Of Record

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

ROSE CHERMIN KUSNITZ, Petitioner,

v.

JAMES J. BOYLE, United States Marshal, Respondent.

No. 13445-WM

PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Rose Chermin Kusnitz, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of her liberty, to produce the body of your petitioner, or Rose Chermin Kusnitz, before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 26, 1951, your petitioner was arrested at her home

in the city of Los Angeles, County of Los Angeles, State of California, upon a warrant issued July 25, 1951 by Howard V. Calverley, United States Commissioner in the Southern District of California, pursuant to a complaint charging your petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

Following petitioner's arrest and on July 26, 1951, your petitioner was arraigned before said United States Commissioner and by said Commissioner was ordered to be held in the custody of the respondent herein upon bail fixed by said Commissioner in the sum of $75,000 and by virtue of such order your petitioner was confined in the County Jail of the County of Los Angeles in the custody of said respondent on said day and where petitioner has continuously remained until the present time.

III.

Thereafter and on or about July 27, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that your petitioner be released from the custody of the respondent upon reasonable bail in order that petitioner might properly prepare petitioner's defense and because the fixing of excessive bail by the United States Commissioner constituted a violation of the rights guaranteed to him by the Constitution of the United States.

IV.

An order to show cause why the said petition for writ of habeas corpus should not be granted was signed by Honorable Leon R. Yankwich, a judge of this Court on July 27, 1951 and made returnable before said Court on July 31, 1951 at 10 A.M.

V.

Upon information and belief, the United States Attorney summoned the Grand Jury to convene on July 31, 1951 at 9 A.M. and

in the space of about fifteen minutes, the said Grand Jury returned the indictment herein charging your petitioner together with eleven other named defendants with conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671.

VI.

That on July 31, 1951 when your petitioner's petition for writ of habeas corpus came on for hearing, the Court was informed by the United States Attorney that an indictment had been returned and that for the aforesaid reason, the hearing on the petition for writ of habeas corpus before the Court had become moot, and that thereupon the Court discharged the order to show cause why the petition for writ of habeas corpus should not be granted.

VII.

Thereupon, and on the same day, your petitioner was taken before the Honorable James M. Carter, a judge of this Court before whom the indictment was returned and the said Court then announced that it was fixing bail in an amount recommended by the Grand Jury. Upon information and belief, the true bill returned against the defendants including your petitioner contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were written on a copy of the indictment with the notation of $75,000 for all defendants except the defendant, William Schneiderman, where the notation was $100,000, and that these writings were unsigned.

VIII.

Thereafter, and on August 6, 1951, your petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

IX.

On August 6, 1951, the aforesaid motion to fix or reduce bail

came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

X.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S. C.A. section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XI.

That thereupon, and at the request of counsel for one of the defendants herein, Philip Marshall Connelly, the said Judge James M. Carter withheld his ruling on the said Connelly's motion to fix or reduce bail until an application could be made to the United States Court of Appeals for the Ninth Circuit for a ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XII.

That thereafter, the motion ~~to~~ fix or reduce bail on your petitioner's behalf was argued before the said Judge and on August 8, 1951 your petitioner's bail was fixed at the sum of $50,000.

XIII.

Thereafter, on August 13, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that petitioner be released from the custody of the respondent upon reasonable bail, and on the said day the writ was issued by the Honorable William C. Mathes, a Judge of this Court and made returnable before said Judge on August 15, 1951.

XIV.

On August 15, 1951 the said writ came on for hearing before the said Judge William C. Mathes, and after hearing, and by order dated August 17, 1951, the said petition was dismissed and the writ discharged.

XV.

On August 18, 1951, your petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order discharging the writ of habeas corpus.

XVI.

Thereafter, and on August 24, 1951, the United States Court of Appeals rendered its decision on the application of the defendant herein, Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter, and the said Court did hold that the aforesaid affidavit of bias and prejudice was legally surficient and ordered the said Judge to proceed no further respecting the said Connelly's bail proceedings or in connection with the said Connelly's prosecution under the indictment.

XVII.

In view of the decision of the Court of Appeals, and because of the doubt created thereby as to whether the said Judge James M. Carter had the power or jurisdiction originally to fix or reduce bail for petitioner or the other petitioners herein, after the aforesaid joint affidavit of bias and prejudice was filed, the petitioner decided to withdraw the aforesaid appeal.

XVIII.

On August 27, 1951, the United States Attorney for the Southern District of California, counsel for the respondent, and counsel for the petitioner stipulated in writing to dismiss the aforesaid appeal and said stipulation was filed with the clerk of the United States Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court.

XIX.

Thereafter, and on August 29, 1951, the petitioner together with the other defendants were brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to the aforesaid Judge William C. Mathes.

XX.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951 fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951 as the day for the appearance of counsel to determine the date of trial which the said Judge indicated would be October 30, 1951 unless strong reason was shown to the contrary.

XXI.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail and unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XXII.

Petitioner is advised by Counsel that under the Constitution petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXIII.

Petitioner is a naturalized citizen of the United States and has lived in this Country continuously since 1914 and in Los Angeles or its vicinity since 1932. Petitioner is married and lives with her husband and their eleven year old daughter in a home owned by them in the City of Los Angeles.

XXIV.

Petitioner came to the United States in 1914 as a child of eleven and was graduated as an honor student from Crosby High School in the City of Waterbury, Connecticut. During World War I, she was employed in defense plants in the eastern states.

XXV.

For the past several months petitioner has been, and now is, employed as executive secretary of the Los Angeles Committee for Protection of the Foreign Born, a voluntary association existing for the assistance and defense of foreign-born residents of the United States. Petitioner's salary in such employment is $30.00 per week plus $15.00 for expenses. Prior to this employment she was not employed.

Her husband is employed as an engineer at a salary of approximately $550.00 per month. Apart from their earnings aforesaid, their home in Los Angeles, petitioner and her husband have no other income, property or assets.

XXVI.

Petitioners has two married sisters living in or around Los Angeles. She has never been arrested before.

XXVII.

Throughout the evening of July 25, 1951 petitioner was conscious that she was being followed and watched by two men whom she believed to be FBI agents. On the basis of recent newspaper publicity predicting the arrest of many persons under the said Smith Act, she anticipated that such surveillance might presage her

arrest. Nevertheless, petitioner took no steps and made no effort to avoid arrest or to conceal herself.

XXVIII.

Petitioner hereby states and represents to this Court that she intends in good faith to remain and that she will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that she does not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioner believes that she is not guilty of the offenses charged in the indictment and she intends to vigorously prosecute her defense. Petitioner believes that upon the trial of this indictment herein, she will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive her of liberties secured to her by the Constitution of the United States.

XXIX

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XXX

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

XXXI

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XXXII

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XXXIII

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XXXIV

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XXXV

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XXXVI

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XXXVII

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XXXVIII

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XXXIX

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XL

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLI

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLII

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLIII

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XLIV

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XLV

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

XLVI

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

(Receipt September 4, 1951) Isl Rose Chernin Kusnitz

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000 reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants $5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5). Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 153 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration pointa[illegible]	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personationsand Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act *44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Juvenile Delinquency (Forgery U.S. Money Order)		1	
Mailing obscene letter	10-$ 5,000	1	$ 2,500
Engage in business of purchasing spirits for resale without basic permit		2	2,500
Transport stolen motor vehicle	5- 5,000	1	
Forging and cashing Government bonds	10- 1,000	2	2,500
Theft of mail	5- 2,000	1	1,000
Forging Government Obligation	15- 5,000	1	500
Bank robbery, transporting interstate stolen money and flight to avoid prosecution	25-10,000	3	Held No Bond
Forging and uttering Government check	10- 1,000	2	1,000
Transporting stolen motor vehicle in foreign commerce	5- 5,000	1	3,000 (reduced to 2,000)
Anti-trust conspiracy to fix, determine, establish and maintain noncompetitive prices, etc. of fire extinguishers	1- 5,000	1	Own Recognizance (later 1,000)

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognizance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Recognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongi-zance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering goverment checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Official asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5- 10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	+ 5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 605; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy; Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A.

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	2,500
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - 10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj. Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - 5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizan
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizan
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizan
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizan

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - 1,000	4	Own Recognizance
Forging Government Check	10 - 1,000	2	5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of ma il by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - $10,000	1	1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship.	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of Marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense - kick - backs on sub-contracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM SCHNEIDERMAN, et al., Defendants.

No. 21883-Crim.

O R D E R

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
112 West Ninth Street
Los Angeles 15, California
VAndike 7153
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
HIghtower 4-1707

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

ROSE CHERNIN KUSNITZ,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13445-WM

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marshal for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 North Spring Street, Los Angeles, California, on the 6th Day of September 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody such officers or agents as may have the same for and on his behalf, the body of Rose Chernin Kusnitz, petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respondent herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respohdent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

KUSNITZ, Rose Chernin
Petitioner,
vs.
JAMES J. BOYLE, United States Marshal,
Respondent.

NO. 13445-WM

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marsha. for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, Rose Chernin Kusnitz , is not unlawfully imprisoned or restrained of her liberty, and her imprisonment and detention are not illegal, arbitrary or a denial of rights secured to her by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951, in the City of Los Angeles , State of California, by Special Agents of the Federal Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V. Calverley, United States Commissioner for the Southern District of California,

pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorable Howard V. Calverley, at Los Angeles, California, who then and there arraigned said petitioner and continued the matter to August 9, 1951 at 10:00 a.m. for preliminary examination and set bail in the amount of $75,000 pending said preliminary examination, and in default thereof ordered said petitioner committed to the custody of this respondent.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned.

V

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request, the order setting said matter for plea on August 20, 1951, was vacated and the plea on said indictment was again continued until the 22nd day of August, 1951. On August 22, 1951, the plea was continued at petitioner's request to August 29, 1951, and on August 29, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs VIII to XVIII of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided August 24, 1951), was rendered, Judge James M. Carter did, on the 29th day of August, 1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J. McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August, 1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30, 1951, reducing the amount of bail set on said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judge Wm. C. Mathes the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defend-

in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2, 1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3, 1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in s aid indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshall for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismiss ed and that the petitioner, Rose Chernin Kusnitz, be remaded to respondent's custody to be dealt with according to the laws of the United States of America.

/s/ James J. Boyle
JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

/s/ James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me
this 6th day of September, 1951

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California
By /s/ Charles A. Secty Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETTA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, Defendants.	No. _____ CD (U.S.C., Title 18, Sec. 11 1946 Ed. U.S.C., Title 18, Sec. 371 1948 Ed.) Section 3 of the Smith Act, 54 Stat. 671 - Conspiracy to violate the Smith Act) I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously, thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETTA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stackel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the

Smith Act 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume Leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants.

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to,

"Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of

the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950 WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at

2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

Foreman

ERNEST A. TOLIN,
United States Attorney.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13436

AL RICHMOND,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13437

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. B 438

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs. No. 13439

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs. No. 13440

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs. No. 13441

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner,

vs. No. 13442

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs. No. 13443

JAMES J. BOYLE, United States Marshal,

Respondent.

CLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District Cou

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436-BH
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437-BH
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13438-BH

DOROTHY ROSENBLUM HEALEY,

Petitioner, No. 13439-BH

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner, No. 13440-BH

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner, No. 13441-BH

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner, No. 13442-BH

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner, No. 13443-BH

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

GRETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444-BH
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445-BH
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446-BH
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive, and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case, and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle, No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to concluds that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delays the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 6th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 6th day of September 1951, and approved as to form.

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By
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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appe l, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

D TED: September 6, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitioner

Agreed to:

United States Attorney

LIBRARY
SUPREME COURT, U.S.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDY LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners-Appellants,

-vs-

JAMES J. BOYLE, United States Marshal,

Respondent.

) No.

TRANSCRIPT OF RECORD ON APPEAL

(MARY BERNADETTE DOYLE)

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Notice Of Appeal

Designation Of Record

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

MARY BERNADETTE DOYLE

Petitioner,

v.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 1346-HW

PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Mary Bernadette Doyle, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of her liberty, to produce the body of your petitioner, Mary Bernadette Doyle before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 25, 1951, a warrant was issued by Howard V.

Calverley, United States Commissioner in the Southern District of California, pursuant to a complaint charging your petitioner and one William Schneiderman, with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

On July 26, 1951, petitioner was unlawfully arrested by agents of the Federal Bureau of Investigation who produced no warrant for arrest and stated that they needed no warrant of arrest for your petitioner although your petitioner demanded the production of a warrant of arrest; that said agents declined to state the reasons for your petitioner's arrest or the existence of any charges against petitioner or the fact that a warrant had been issued, and thereupon forcibly took petitioner into custody.

III.

Following petitioner's arrest as aforesaid and on July 26, 1951, petitioner was arraigned before United States Commissioner Francis St. J. Fox in San Francisco and by said Commissioner was ordered to be held in custody upon bail fixed by said Commissioner in the sum of $2,500. Bail in the aforesaid sum was furnished and petitioner was released from her confinement in the United States Marshal's office.

IV.

Thereafter and on or about July 27, 1951, the United States Attorney for the Northern District of California made application to the Honorable Louis E. Goodman, a judge of the United States District Court for the Northern District of California for an increase in said bail. On said day the said District Judge modified the aforementioned order of the said Commissioner and did make his order fixing bail in the sum of $50,000. In fixing the said sum the District Judge ruled that the narrow question before him was the amount of bail which should be fixed pending removal

to this Court where the complaint originally issued. By virtue of said order of said Judge, petitioner was then confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

V.

Thereafter, on July 28, 1951, petitioner filed a petition for writ of habeas corpus to the said Honorable Louis E. Goodman, for a reduction of bail and the said Judge, basing his ruling on the record of proceedings of July 27, 1951, denied the petition.

VI.

Upon information and belief, the United States Attorney for the Southern District of California, summoned a Grand Jury to convene on July 31, 1951, at 9 A.M. and in the space of about fifteen minutes the said Grand Jury returned the indictment herein, charging your petitioner together with the above-mentioned defendants with a conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671.

VII.

On August 1, 1951, petitioner was removed from the County Jail of the City and County of San Francisco and brought to the County of Los Angeles where petitioner was confined in the County Jail of the County of Los Angeles under the custody of the United States Marshal James J. Boyle.

VIII.

Thereafter and on August 2, 1951, petitioner was taken before the Honorable James M. Carter, the judge of this Court before whom the indictment was returned. Upon information and belief, the true bill returned against the defendants contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were written

on a copy of the indictment with the notation of $75,000 for all defendants except the defendant William Schneiderman, where the notation was $100,000, and that these writings were unsigned. Upon arraignment before the said Judge no further reference was made to bail.

IX.

Thereafter and on August 6, 1951, petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

X.

On August 6, 1951, the aforesaid motion to fix or reduce bail came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

XI.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S.C.A. Section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XII.

That thereupon, and at the request of counsel for one of the defendants herein, Philip Marshall Connelly, the said Judge James M. Carter withheld his ruling on the said Connelly's motion to fix or reduce bail until an application could be made to the

United States Court of Appeals for the Ninth Circuit for a ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XIII.

That thereafter, the motion to fix or reduce bail on your petitioner's behalf was argued before the said Judge and on August 8, 1951, your petitioner's bail was fixed at the sum of $50,000.

XIV.

Thereafter, on August 13, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that petitioner be released from the custody of the respondent upon reasonable bail, and on the said day the writ was issued by the Honorable William C. Mathes, a Judge of this Court and made returnable before said Judge on August 15, 1951.

XV.

On August 15, 1951, the said writ came on for hearing before the said Judge William C. Mathes, and after hearing, and by order dated August 17, 1951, the said petition was dismissed and the writ discharged.

XVI.

On August 18, 1951, your petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order discharging the writ of habeas corpus.

XVII.

Thereafter, and on August 24, 1951, the United States Court of Appeals rendered its decision on the application of the defendant herein, Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter, and the said Court did hold that the aforesaid affidavit of bias and prejudice was legally

sufficient and ordered the said Judge to proceed no further respecting the said Connelly's bail proceedings or in connection with the said Connelly's prosecution under the indictment.

XVIII.

In view of the decision of the Court of Appeals, and because of the doubt created thereby as to whether the said Judge James M. Carter had the power or jurisdiction originally to fix or reduce bail for petitioner or the other petitioners herein, after the aforesaid joint affidavit of bias and prejudice was filed, the petitioner decided to withdraw the aforesaid appeal.

XIX.

On August 27, 1951, the United States Attorney for the Southern District of California, counsel for the respondent, and counsel for the petitioner stipulated in writing to dismiss the aforesaid appeal and said stipulation was filed with the clerk of the United States Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court.

XX.

On August 29, 1951, petitioner together with the other defendants has brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to the aforesaid Judge William C. Mathes.

XXI.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951, fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18, 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951, as the day for the appearance of counsel to de-

termine the date of trial which the said Judge indicated would be October 30, 1951, unless strong reason was shown to the contrary.

XXII.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail have unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XXIII.

Petitioner is advised by Counsel that under the Constitution petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXIV.

Petitioner is a native-born citizen of the United States, born August 5, 1905, at San Jose, California. Her father was also born in California; her grandfather, an immigrant from Ireland, settled in San Jose, California, in the year 1850. On her mother's side, her forebears go back to 1619, when some of them settled as colonists in this country; included in her ancestry was Charles Carroll of Carrollton, Maryland, one of the fifty-six signers of the Declaration of Independence of the Thirteen United States of America, July 4, 1776.

XXV.

Continuously since her birth, petitioner has lived and resided in the State of California, was educated in the public schools of said State, and attended the University of California at Los Angeles and the University of California at Berkeley. During a portion of said time, she maintained herself by employment with Pacific Telephone and Telegraph Company; said employment extending from 1922 to 1937.

XXVI.

Petitioner is unmarried.

XXVII.

Petitioner has no bank account or real or personal property other than her personal belongings of insignificant value. Her income is $47 per week.

XXVIII.

In 1942 petitioner was a candidate for the office of Mayor of Berkeley. In 1950 she was a candidate in a statewide election for the office of Superintendent of Public Instruction, and polled in excess of 600,000 votes.

XXIX.

In 1944 it was medically discovered that petitioner suffered from a pituitary tumor. In subsequent years, petitioner, by reason thereof, has required two series of deep x-ray therapy, and one abdominal surgery. She suffers from a condition of high blood pressure by reason whereof she has been placed by attending physicians upon a prescribed and special diet. Petitioner also suffers from a chronic bronchial condition, and recently was advised of a medical finding of the existence of a uterine tumor.

In 1950 petitioner suffered a heart attack and bronchial disorder and she has been informed by her physicians that these bronchial and heart conditions as well as the possibility of diabetes might result from the pituitary tumor from which she suffered.

XXX.

Petitioner hereby states and represents to this Court that she intends in good faith to remain and that she will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that she does not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioner believes that she is not guilty of the offense charged in the indictment and she intends to vigorously prosecute her defense. Petitioner believes that upon the trial of this indictment herein, she will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive her of liberties secured to her by the Constitution of the United States.

XXXI

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XXXII

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

XXXIII

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XXXIV

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XXXV

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XXXVI

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XXXVII

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XXXVIII

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XXXIX

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XL

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XLI

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XLII

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLIII

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLIV

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLV

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XLVI

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XLVII

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

XLVIII.

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

/s/ Mary Bernadette Doyle

(verified September 4, 1951)

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000 reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants

$5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personationsand Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act #44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

	CHARGE	PENALTY	COUNTS	BAIL
1.	Juvenile Delinquency			
2	Forgery U.S. Money Order)		1	
3	Mailing obscene letter	10-$ 5,000	1	$ 2,500
4	Engage in business of			
5	purchasing spirits for			
6	resale without basic			
7	permit		2	2,500
8	Transport stolen motor			
9	vehicle	5- 5,000	1	
10	Forging and cashing			
11	Government bonds	10- 1,000	2	2,500
12	Theft of mail	5- 2,000	1	1,000
13	Forging Government			
14	Obligation	15- 5,000	1	500
15	Bank robbery, transport-			
16	ing interstate stolen			
17	money and flight to			
18	avoid prosecution	25-10,000	3	Held No Bon
19	Forging and uttering			
20	Government check	10- 1,000	2	1,000
21	Transporting stolen motor			
22	vehicle in foreign			
23	commerce	5- 5,000	1	3,000 (reduced to 2,000)
24				
25	Anti-trust conspiracy to			
26	fix, determine, establish			
27	and maintain noncompetitive			
28	prices, etc. of fire			
29	extinguishers	1- 5,000	1	Own Recogni zance (later 1,000)
30				
31				
32				

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognisance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Rexognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongi-zance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering goverment checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Official asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5- 10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 605; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy; Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	$2,500
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500
* Referred to in Exhibit A	-		

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - 10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of Marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj. Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - $5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - $ 1,000	4	Own Recognizance
Forging Government Check	10 - 1,000	2	$ 5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of ma il by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - $10,000	1	$1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Administration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana.		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of Marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense - kick - backs on sub-contracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM SCHNEIDERMAN, et al., Defendants.

No. 21883-Crim.

O R D E R

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
712 West Ninth Street
Los Angeles 15, California
VAndike 7153
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
HIghtower 4-1707

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

MARY BERNADETTE DOYLE,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13446-MW

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marsh for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 Nort Spring Street, Los Angeles, California, on the 6th Day of September 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody such officers or agents as may have the same for and on his behalf, the body of Mary Bernadette Doyle, petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respondent herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

MARY BERNADOTTE DOYLE,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

NO. 13446-HW

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, Mary Bernadotte Doyle, is not unlawfully imprisoned or restrained of her liberty, and her imprisonment and detention are not illegal, arbitrary or a denial of rights secured to her by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951, in the City of San Francisco, State of California, by Special Agents of the Federal Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V. Calverley, United States Commissioner for the Southern District of California,

pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest he was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorable Francis St. J. Fox, at San Francisco, California, who then and there arraigned said petitioner and set bail in the amount of $ 2,500 pending removal to this district. Thereafter, on or about the 27th day of July, 1951, an application was made to the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for increase of said bail. Following a full hearing on said application, said District Judge modified the order of the Commissioner, and increased bail of the petitioner to the sum of $50,000 pending removal of the petitioner to this district, and in default thereof ordered the petitioner committed to the custody of the United States Marshal in San Francisco, California, Thereafter, on July 28, 1951, the petitioner herein filed a petition for writ of habeas corpus, which petition was heard by the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for the purpose of obtaining a further reduction of bail. This petition was denied.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned. On August 1, 1951, following the return of the indictment herein, the petitioner was removed from the City and County of San Francisco and brought to the County of Los Angeles, where

her custody was delivered to the respondent herein, James J. Boyle, United States Marshal for the Southern District of California.

V

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request, the Order setting said matter for plea on August 20th, 1951, was vacated and the plea on said indictment was again continued, at petitioner's request, until the 22nd day of August, 1951. On August 22nd, 1951, the plea was continued to August 29th, 1951, and on August 29th, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose Court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs ~~___~~ to ~~___~~ of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided August 24,1951), was rendered, Judge James M. Carter did, on the 29th day of August,1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J.McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August,1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30,1951, reducing the amount of bail set on said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm. C. Mathes and Louis E. Goodman the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendants

in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2,1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3,1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in said indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshal for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismissed and that the petitioner, Mury Bernadotte Doyle, be remanded to respondent's custody to be dealt with according to the laws of the United States of America.

James J. Boyle

JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me this 4th day of September, 1951.

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California

By Charles A Setty Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

February, 1951, Grand Jury

FILED
JULY 31, 1951
EDMUND L. SMITH, CLERK
By Maxine Lewis, Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM SCHNEIDERMAN,
DOROTHY ROSENBLUM HEALEY,
ALBERT JASON LIMA,
OLETA O'CONNOR YATES,
CARL RUDE LAMBERT,
PHILIP MARSHALL CONNELLY,
ROSE CHERNIN KUSNITZ,
AL RICHMOND, also known as
Abraham Richman,
ERNEST OTTO FOX, also known as
Ernest Ottó Fuchs,
HENRY STEINBERG,
LORETTA STARVUS STACK, and
MARY BERNADETTE DOYLE,

Defendants.

No. 21883 CD

[U.S.C., Title 18, Sec. 11 (1946 Ed.);
U.S.C., Title 18, Sec. 371 (1948 Ed.);
Section 3 of the Smith Act, 54 Stat. 671-
Conspiracy to violate the Smith Act]

I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants

EXHIBIT A

herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaires of said Party, knowing the purposes of the Party, and in such capacities would assume leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants;

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to, "Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said Party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1946, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California;

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at 2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

Robert B. Young, III
Foreman

Ernest A. Tolin
ERNEST A. TOLIN,
United States Attorney.

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs. No. 13439

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs. No. 13440

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs. No. 13441

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner,

vs. No. 13442

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs. No. 13443

JAMES J. BOYLE, United States Marshal,

Respondent.

CLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	)	No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13439-BH

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440-BH

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13441-BH

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13442-BH

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443-BH

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444-BH
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445-BH
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446-BH
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Stipulation and Order of Consolidation

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

No. 13436

JAMES J. BOYLE, United States Marshal,

Respondent.

AL RICHMOND,

Petitioner,

vs.

No. 13437

JAMES J. BOYLE, United States Marshal,

Respondent.

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

No. B 438

JAMES J. BOYLE, United States Marshal,

Respondent.

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District Cour

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436-BH
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437-BH
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13438-BH

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case, and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle, No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delays the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

ERNEST A. TOLIN
United States Attorney

RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of Indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motion Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 6th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 6th day of September 1951, and approved as to form.

Ben Margolis

Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By
Ben Margolis

Attorneys for remaining Petitioners

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VAndike 7153
and
Daniel G. Marshall
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Los Angeles 13, California
TRinity 6011

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Oakland, California
HIghtower 4-1707

Attorneys for remaining Petitioners-Appellants

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

Nos. 13436/13447

DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLI UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in th record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appeal, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

DATED: September 6, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitioner

Agreed to:

_____
United States Attorney

Office-Supreme Court, U.
FILED
OCT 25 1951
CHARLES ELMORE CROPLEY

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, CLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, -vs- JAMES J. BOYLE, United States Marshal, Respondent.	No. 400

TRANSCRIPT OF RECORD ON APPEAL

(CLETA O'CONNOR YATES)

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Notice Of Appeal

Designation Of Record

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

GLETA O'CONNOR YATES, Petitioner, v. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444-C PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Gleta O'Connor Yates, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of her liberty, to produce the body of your petitioner, Gleta O'Connor Yates, before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 25, 1951, a warrant was issued by Howard V.

Calverley, United States Commissioner in the Southern District of California, pursuant to a complaint charging your petitioner and one William Schneiderman, with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Ac 54 Stat. 671.

II.

On July 26, 1951, petitioner was unlawfully arrested by agents of the Federal Bureau of Investigation who produced no warrant for arrest and stated that they needed no warrant of arrest for your petitioner although your petitioner demanded the production of a warrant of arrest; that said agents declined to state the reasons for your petitioner's arrest or the existence of any charges against petitioner or the fact that a warrant had been issued, and thereupon forcibly took petitioner into custody.

III.

Following petitioner's arrest as aforesaid and on July 26, 1951, petitioner was arraigned before United States Commissioner Francis St. J. Fox in San Francisco and by said Commissioner was ordered to be held in custody upon bail fixed by said Commissione in the sum of $7,500. Bail in the aforesaid sum was furnished an petitioner was released from her confinement in the United States Marshal's office.

IV.

Thereafter and on or about July 27, 1951; the United States Attorney for the Northern District of California made application to the Honorable Louis E. Goodman, a judge of the United States District Court for the Northern District of California for an increase in said bail. On said day the said District Judge modified the aforementioned order of the said Commissioner and did make his order fixing bail in the sum of $50,000. In fixing the said sum the District Judge ruled that the narrow question before him was the amount of bail which should be fixed pending removal

to this Court where the complaint originally issued. By virtue of said order of said Judge, petitioner was then confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

V.

Thereafter, on July 28, 1951, petitioner filed a petition for writ of habeas corpus to the said Honorable Louis E. Goodman, for a reduction of bail and the said Judge, basing his ruling on the record of proceedings of July 27, 1951, denied the petition.

VI.

Upon information and belief, the United States Attorney for the Southern District of California, summoned a Grand Jury to convene on July 31, 1951, at 9 A.M. and in the space of about fifteen minutes the said Grand Jury returned the indictment herein, charging your petitioner together with the above-mentioned defendants with a conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671.

VII.

On August 1, 1951, petitioner was removed from the County Jail of the City and County of San Francisco and brought to the County of Los Angeles where petitioner was confined in the County Jail of the County of Los Angeles under the custody of the United States Marshal James J. Boyle.

VIII.

Thereafter and on August 2, 1951, petitioner was taken before the Honorable James M. Carter, the judge of this Court before whom the indictment was returned. Upon information and belief, the true bill returned against the defendants contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were written

on a copy of the indictment with the notation of $75,000 for all defendants except the defendant William Schneiderman, where the notation was $100,000, and that these writings were unsigned. Upon arraignment before the said Judge no further reference was made to bail.

IX.

Thereafter and on August 6, 1951, petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

X.

On August 6, 1951, the aforesaid motion to fix or reduce bail came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

XI.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S.C.A. Section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XII.

That thereupon, and at the request of counsel for one of the defendants herein, Philip Marshall Connelly, the said Judge James M. Carter withheld his ruling on the said Connelly's motion to fix or reduce bail until an application could be made to the

United States Court of Appeals for the Ninth Circuit for a ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XIII.

That thereafter, the motion to fix or reduce bail on your petitioner's behalf was argued before the said Judge and on August 8, 1951, your petitioner's bail was fixed at the sum of $25,000.

XIV.

Thereafter, on August 13, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that petitioner be released from the custody of the respondent upon reasonable bail, and on the said day the writ was issued by the Honorable William C. Mathes, a Judge of this Court and made returnable before said Judge on August 15, 1951.

XV.

On August 15, 1951, the said writ came on for hearing before the said Judge William C. Mathes, and after hearing, and by order dated August 17, 1951, the said petition was dismissed and the writ discharged.

XVI.

On August 18, 1951, your petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order discharging the writ of habeas corpus.

XVII.

Thereafter, and on August 24, 1951, the United States Court of Appeals rendered its decision on the application of the defendant herein, Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter, and the said Court did hold that the aforesaid affidavit of bias and prejudice was legally

sufficient and ordered the said Judge to proceed no further respecting the said Connelly's bail proceedings or in connection with the said Connelly's prosecution under the indictment.

XVIII.

In view of the decision of the Court of Appeals, and because of the doubt created thereby as to whether the said Judge James M. Carter had the power or jurisdiction originally to fix or reduce bail for petitioner or the other petitioners herein, after the aforesaid joint affidavit of bias and prejudice was filed, the petitioner decided to withdraw the aforesaid appeal.

XIX.

On August 27, 1951, the United States Attorney for the Southern District of California, counsel for the respondent, and counsel for the petitioner stipulated in writing to dismiss the aforesaid appeal and said stipulation was filed with the clerk of the United States Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court.

XX.

On August 29, 1951, petitioner together with the other defendants has brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to the aforesaid Judge William C. Mathes.

XXI.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951, fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18, 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951, as the day for the appearance of counsel to de-

termine the date of trial which the said Judge indicated would be October 30, 1951, unless strong reason was shown to the contrary.

XXII.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail and unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XXIII.

Petitioner is advised by Counsel that under the Constitution petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXIV.

Petitioner was born in the City and County of San Francisco forty-one years ago. Her great-grandparents settled in the said City and County in 1850, and petitioner and her parents and grandparents have never resided elsewhere. Petitioner is thus a citizen of the United States.

XXV.

Petitioner attended Notre Dame Grammar School, Girls' High School (both in San Francisco), and the University of California at Berkeley, California, where she won Bachelor of Arts and Master of Arts degrees.

XXVI.

Petitioner and her husband have resided for five years last past at their home at 419 Peru Avenue in the City and County of San Francisco, which home they own, subject to a purchase money mortgage or deed of trust. The original purchase price of the said home was $4,000, and petitioner and her husband have no other assets other than a 1942 Dodge automobile and approximately $500 in a commercial bank account.

XXVII.

Petitioner has always led an active and public life in the City and County of San Francisco. She has served by appointment of former Mayor Roger Lapham on the Mayor's Committee on Civic Unity. During two additional years petitioner has served on the Executive Committee of the Council for Civic Unity, an eleomosynary organization in the City and County of San Francisco devoted to the improvement of race relations by the elimination of discrimination based on race, color or creed. On two occasions she was a candidate on the ballot for a position on the Board of Supervisors of the City and County of San Francisco, and on each occasion polled in excess of 40,000 votes. Petitioner has never before been arrested, not even for a traffic violation.

XXVIII.

For more than one year last past, petitioner has been afflicted with a heart condition diagnosed by her physician as excessive palpitation. Petitioner has been informed by her physicians that her condition requires regular examination by them, that she must be regularly medicated by the use of pheno-barbitol and that her condition is supposed to become aggravated upon undue excitement. They have prescribed the observance of regular hours, rest, the avoidance of any disturbances and the continual use of prescribed medication. Petitioner has on a previous occasion suffered a spontaneous pneumothorax which caused the left side of

her lung to collapse. She has been advised by her physician that this kind of an attack can happen to her again and any cold at the present time causes her pain on the left side. Petitioner has arthritis in the fingers of one hand and in her knee. Petitioner is badly in need of treatment for all her teeth which are now in a very poor condition. Her physician has also ordered regular basal metabolism tests and chest x-rays at least twice a year.

XXIX:

Petitioner hereby states and represents to this Court that she intends in good faith to remain and that she will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that she does not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court.

Petitioner believes that she is not guilty of the offense charged in the indictment and she intends to vigorously prosecute her defense. Petitioner believes that upon the trial of this indictment herein, she will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive her of liberties secured to her by the Constitution of the United States.

~~XXX~~

XXX

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XXX/

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

XXXII

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XXXIII

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. ~~Article "The Present~~ Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter. . . .

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XXXIV

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XXXV

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XXXVI

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XXXVII

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XXXVIII

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XXXIX

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XL

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XLI

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLII

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLIII

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLIV

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XLV

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XLVI

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

XLVII

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

(Verified Sept. 4. 1951)

/s/ Aleta O'Connor Gates

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000 reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants $5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - $5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - 1,000	4	Own Recognizance
Forging Government Check	10 - 1,000	2	5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personationsand Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Re-adjustment Act #44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Juvenile Delinquency (Forgery U.S. Money Order)		1	
Mailing obscene letter	10-$ 5,000	1	$ 2,500
Engage in business of purchasing spirits for resale without basic permit		2	2,500
Transport stolen motor vehicle	5- 5,000	1	
Forging and cashing Government bonds	10- 1,000	2	2,500
Theft of mail	5- 2,000	1	1,000
Forging Government Obligation	15- 5,000	1	500
Bank robbery, transporting interstate stolen money and flight to avoid prosecution	25-10,000	3	Held No Bond
Forging and uttering Government check	10- 1,000	2	1,000
Transporting stolen motor vehicle in foreign commerce	5- 5,000	1	3,000 (reduced to 2,000).
Anti-trust conspiracy to fix, determine, establish and maintain noncompetitive prices, etc. of fire extinguishers	1- 5,000	1	Own Recognizance (later 1,000)

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognizance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Recognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongi-zance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering goverment checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Official asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5- 10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 605; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy;			
Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	Own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act, 1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	2,000
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - 10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj. Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

/s/ James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me
this 6th day of September, 1951

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California
By /s/ Charles A. Secty Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, Defendants.	No. _____ CD (U.S.C., Title 18, Sec. 11 1946 Ed. U.S.C., Title 18, Sec. 371 1948 Ed.) Section 3 of the Smith Act, 54 Stat. 671 - Conspiracy to violate the Smith Act)

I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously, thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stackel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - $10,000	1	1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense - kick - backs on subcontracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM SCHNEIDERMAN, et al., Defendants.

No. 21883-Crim.

O R D E R

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select, An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
112 West Ninth Street
Los Angeles 15, California
VAndike 7183
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
HIghtower 4-1707
Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444-C ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marsh for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 Nort Spring Street, Los Angeles, California, on the 6th Day of September 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody such officers or agents as may have the same for and on his behalf, the body of **Oleta O'Connor Yates**, petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respondent herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

OLETA O'CONNOR YATES,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

NO. 18444-C

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, OLETA O'CONNOR YATES, is not unlawfully imprisoned or restrained of her liberty, and her imprisonment and detention are not illegal, arbitrary or a denial of rights secured to her by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951, in the City of San Francisco, State of California, by Special Agents of the Federal Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V. Calverley, United States Commissioner for the Southern District of California,

pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest ~~she~~ was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorable Francis St. J. Fox, at San Francisco, California, who then and there arraigned said petitioner and set bail in the amount of $7,500 pending removal to this district. Thereafter, on or about the 27th day of July, 1951, an application was made to the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern Dis trict of California, for increase of said bail. Following a full hearing on said application, said District Judge modified the order of the Commissioner, and increased bail of the petitioner to the sum of $50,000 pending removal of the petitioner to this district, and in default thereof ordered the petitioner committed to the custody of the United States Marshall in San Francisco, California. Thereafter, on July 28, 1951, the petitioner herein filed a petition for writ of habeas corpus, which petition was heard by the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for the purpose of obtaining a further reduction of bail. This petition was denied.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned. On August 1, 1951, following the return of the indictment herein, the petitioner was removed from the City and County of San Francisco and brought to the County of Los Angeles, where

her custody was delivered to the respondent herein, James J. Boyle, United States Marshal for the Southern District of California.

V

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request, the Order setting said matter for plea on August 20th, 1951, was vacated and the plea on said indictment was again continued, at petitioner's request, until the 22nd day of August, 1951. On August 22nd, 1951, the plea was continued to August 29th, 1951, and on August 29th, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose Court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs IX to XIX of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided August 24, 1951), was rendered, Judge James M. Carter did, on the 29th day of August, 1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J. McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August, 1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30, 1951, reducing the amount of bail set on said indictment to the sum of $50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm. C. Mathes and Louis E. Goodman the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defend-

in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictment was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2, 1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3, 1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in s aid indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshall for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismiss ed and that the petitioner, Dieta O'Connor Yates, be remaded to respondent's custody to be dealt with according to the laws of the United States of America.

/s/ James J. Boyle
JAMES J. BOYLE
United States Marshal for the
Southern District of California

OLETA O'CONNOR YATES,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13444-BH

ROSE CHERNIN KUSNITZ,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13445-BH

MARY BERNADETTE DOYLE,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13446-BH

ALBERT JASON LIMA,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive, and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

Smith Act 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume Leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants.

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to,

"Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of

the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE BOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY SPRINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950 WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9. On or about February 15, 1950, MARY BERNADETTE BOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at

2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDY LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL:

Foreman.

ERNEST A. TOLIN,
United States Attorney.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

No. 13436

JAMES J. BOYLE, United States Marshal,

Respondent.

AL RICHMOND,

Petitioner,

vs.

No. 13437

JAMES J. BOYLE, United States Marshal,

Respondent.

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

No. B 438

JAMES J. BOYLE, United States Marshal,

Respondent.

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13439.

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13441

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13442

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District Co

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13436-BH
AL RICHMOND, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13437-BH
PHILIP MARSHALL CONNELLY, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13438-BH

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal;

Respondent.

No. 13439-BH

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440-BH

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13441-BH

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13442-BH

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443-BH

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case, and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle; No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delays the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulation of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 12th day of September, 1951, and approved as to form.

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, vs. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 12th day of September, 1951.

/s/ Ben Margolis

Ben Margolis

/s/ Daniel G. Marshall

Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis

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/s/ Leo A. Sullivan

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

Nos. 13436/13447

DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN, UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appeal, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

DATED: September 12, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioner

Agreed to:

/s/ Ernest A. Tolin
United States Attorney

LIBRARY
SUPREME COURT, U.S.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners-Appellants, -vs- JAMES J. BOYLE, United States Marshal, Respondent.	No.

TRANSCRIPT OF RECORD ON APPEAL

(ALBERT JASON LIMA)

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Notice Of Appeal

Designation Of Record

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

ALBERT JASON LIMA,

Petitioner,

v.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13447-C

PETITION FOR WRIT OF HABEAS CORPUS

TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Albert Jason Lima, the petitioner above named hereby petitions this honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioner is now restrained of his liberty, to produce the body of your petitioner, Albert Jason Lima before this Court at a time and place specified and then and there to show cause why petitioner should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioner alleges as follows:

I.

On July 25, 1951, a warrant was issued by Howard V.

Calverley, United States Commissioner in the Southern District of California, pursuant to a complaint charging your petitioner and one William Schneiderman, with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671.

II.

On July 26, 1951, petitioner was unlawfully arrested by agents of the Federal Bureau of Investigation who produced no warrant for arrest and stated that they needed no warrant of arrest for your petitioner although your petitioner demanded the production of a warrant of arrest; that said agents declined to state the reasons for your petitioner's arrest or the existence of any charges against petitioner or the fact that a warrant had been issued, and thereupon forcibly took petitioner into custody.

III.

Following petitioner's arrest as aforesaid and on July 26, 1951, petitioner was arraigned before United States Commissioner Francis St. J. Fox in San Francisco and by said Commissioner was ordered to be held in custody upon bail fixed by said Commissioner in the sum of $75,000, and by virtue of such order your petitioner was confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

IV.

Thereafter and on or about July 27, 1951, petitioner made application to the Honorable Louis E. Goodman, a judge of the United States District Court for the Northern District of California for a reduction of said bail. On said day the said District Judge modified the aforementioned order of the said Commissioner and did make his order fixing bail in the sum of $50,000. In fixing the said sum the District Judge rule that the narrow question before him was the amount of bail which

should be fixed pending removal to this Court where the complaint originally issued. By virtue of said order of said Judge, petitioner remained confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal.

V.

Thereafter, on July 28, 1951, petitioner filed a petition for writ of habeas corpus to the said Honorable Louis E. Goodman, for a reduction of bail and the said Judge, basing his ruling on the record of proceedings of July 27, 1951, denied the petition.

VI.

Upon information and belief, the United States Attorney for the Southern District of California, summoned a Grand Jury to convene on July 31, 1951, at 9 A.M. and in the space of about fifteen minutes the said Grand Jury returned the indictment herein, charging your petitioner together with the above-mentioned defendants with a conspiracy to violate Section 2. of the Smith Act, 54 Stat. 671.

VII.

On August 1, 1951, petitioner was removed from the County Jail of the City and County of San Francisco and brought to the County of Los Angeles where petitioner was confined in the County Jail of the County of Los Angeles under the custody of the United States Marshal James J. Boyle.

VIII.

Thereafter and on August 2, 1951, petitioner was taken before the Honorable James M. Carter, the judge of this Court before whom the indictment was returned. Upon information and belief, the true bill returned against the defendants contained no recommendation by the Grand Jury relative to bail. Upon information and belief, the names of the defendants were written

on a copy of the indictment with the notation of $75,000 for all defendants except the defendant William Schneiderman, where the notation was $100,000, and that these writings were unsigned. Upon arraignment before the said Judge no further reference was made to bail.

IX.

Thereafter and on August 6, 1951, petitioner moved in the United States District Court for the Southern District of California, Central Division, to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount.

X.

On August 6, 1951, the aforesaid motion to fix or reduce bail came on for argument before the Honorable James M. Carter, United States Judge for the Southern District of California, Central Division.

XI.

Before the commencement of the argument of the motion to fix or reduce bail your petitioner along with the other defendants named in the indictment herein except William Schneiderman filed with the said Court an affidavit of personal bias and prejudice and requested the said Court to disqualify itself and to transfer the hearing on bail to another judge of the District Court pursuant to the provisions of 28 U.S.C.A. Section 144; that said Judge declined to disqualify himself and held the affidavit of personal bias and prejudice legally insufficient on August 7, 1951.

XII.

That thereupon, and at the request of counsel for one of the defendants herein, Philip Marshall Connelly, the said Judge James M. Carter withheld his ruling on the said Connelly's motion to fix or reduce bail until an application could be made to the

United States Court of Appeals for the Ninth Circuit for a ruling on the sufficiency of the aforesaid affidavit of bias and prejudice.

XIII.

That thereafter, the motion to fix or reduce bail on your petitioner's behalf was argued before the said Judge and on August 8, 1951, your petitioner's bail was fixed at the sum of $50,000.

XIV.

Thereafter, on August 13, 1951, your petitioner filed a petition for writ of habeas corpus in this Court praying that the writ issue and that petitioner be released from the custody of the respondent upon reasonable bail, and on the said day the writ was issued by the Honorable William C. Mathes, a Judge of this Court and made returnable before said Judge on August 15, 1951.

XV.

On August 15, 1951, the said writ came on for hearing before the said Judge William C. Mathes, and after hearing, and by order dated August 17, 1951, the said petition was dismissed and the writ discharged.

XVI.

On August 18, 1951, your petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order discharging the writ of habeas corpus.

XVII.

Thereafter, and on August 24, 1951, the United States Court of Appeals rendered its decision on the application of the defendant herein, Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter, and the said Court did hold that the aforesaid affidavit of bias and prejudice was legally

sufficient and ordered the said Judge to proceed no further respecting the said Connelly's bail proceedings or in connection with the said Connelly's prosecution under the indictment.

XVIII.

In view of the decision of the Court of Appeals, and because of the doubt created thereby as to whether the said Judge James M. Carter had the power or jurisdiction originally to fix or reduce bail for petitioner or the other petitioners herein, after the aforesaid joint affidavit of bias and prejudice was filed, the petitioner decided to withdraw the aforesaid appeal.

XIX.

On August 27, 1951, the United States Attorney for the Southern District of California, counsel for the respondent, and counsel for the petitioner stipulated in writing to dismiss the aforesaid appeal and said stipulation was filed with the clerk of the United States Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court.

XX.

On August 29, 1951, petitioner together with the other defendants has brought before the said James M. Carter who formally disqualified himself, and thereupon the proceedings were assigned by the presiding Judge of the said District Court to the aforesaid Judge William C. Mathes.

XXI.

On August 29 and 30, 1951, argument on motions to fix or reduce bail were made before the said Judge William C. Mathes and the said Judge on August 30, 1951, fixed bail for petitioner in the sum of $50,000. At the same time, the said Judge set September 18, 1951 as the time for filing motions and September 26 as the time for argument of said motions; and fixed September 10, 1951, as the day for the appearance of counsel to de-

termine the date of trial which the said Judge indicated would be October 30, 1951, unless strong reason was shown to the contrary.

XXII.

Your petitioner is wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioner in the County Jail and unlawfully deprived petitioner of liberty and abridged the rights guaranteed petitioner by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed hereto and made a part hereof clearly reveal that petitioner has been denied equal justice by the action of the Court in fixing bail at the grossly excessive sum of $50,000.

XXIII.

Petitioner is advised by Counsel that under the Constitution, petitioner is entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioner is entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXIV.

Petitioner was born in the City of Usal, State of California, in the year 1907, and except for the time he was in service in the United States Navy Reserve, he has been continuously a resident of the United States and the State of California since the time of his birth.

XXV.

Petitioner now lives in the City of Richmond, State of California, with his wife, Helen Lima, and their three minor children, whose respective ages are eight years, two years, and two months. Petitioner's income is $60.00 per week. He has no

assets save and except furniture in the home which he rents, and a 1945 automobile.

XVI.

Petitioner has lived in Northern California since the time of his birth, particularly in the Bay Area, except for that period of time in which he served in the Armed Forces.

XVII.

On December 8, 1941, the day after the Japanese attacked Pearl Harbor, petitioner volunteered to serve in the United States Navy Reserve and thereafter served in the Submarine Patrol, at the end of which period he was honorably discharged from the Service.

XXVIII.

Petitioner's occupations have included operation of his own fishing boat for many years out of Eureka, California, and that of carpenter; he is a member of Local 34 of the United Brotherhood of Carpenters and Joiners of America, AFL.

XXIX.

Petitioner has been arrested only once during his lifetime, in Humboldt County, for picketing, in 1935. At that time his bail was set at $2,000. The trial of that case ended in the jury being unable to agree, and the charges were thereafter dismissed on the motion of the District Attorney.

XXX.

Petitioner hereby states and represents to this Court that he intends in good faith to remain and that he will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that he does not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioner believes that he is not guilty of the offense charged in the indictment and he intends

to vigorously prosecute his defense. Petitioner believes that upon the trial of this indictment herein, he will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive him of liberties secured to him by the Constitution of the United States.

XXXI

In order to properly prepare petitioner's defense with the aid of counsel, it is vital that petitioner be released on reasonable bail. An order was entered by the aforesaid Judge William C. Mathes on August 31, 1951 directing the conditions under which petitioner and the co-defendants could prepare for trial. A copy of the aforesaid Order is annexed hereto and marked Exhibit "C." The provisions made in the said Order for the conditions under which the petitioner and the co-defendants may prepare for trial remain inadequate, and under the circumstances hereinafter set forth will place onerous burdens upon the petitioner in the preparation of the defense to the charges contained in the indictment. The petitioner avers that unless petitioner is released on reasonable bail, petitioner will be deprived of a fair trial without due process of law.

XXXII

Under the aforesaid Order the petitioner is permitted to work with counsel on the preparation of the case on Mondays through Fridays only between the hours of 9 A.M. and 5 P.M. These limitations upon the hours of work disregard the scope and nature of the preparation which must be made in the case herein and which, if a proper defense is to be made, requires fulltime preparation, especially in the evenings and on weekends. In addition, the petitioner must prepare, under the said Order, with co-defendants and counsel in a room in the Federal Building or at such place as the respondent shall select; while working in said designated room, petitioner is required to bring in meals at petitioner's own expense; bring in books, documents and other materials without censorship as to content only; and allowed to consult with witnesses provided that each witness shall furnish to respondent his name, address, crime record, if any, and general occupation.

XXX III

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XXX IV

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"--Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.

8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. Article "The Present Situation and Next Tasks" Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

XXXV

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

XXX.VI

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

XXX.VII

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

XXX VIII

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

XXXIX

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

XL

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

XLI

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XLII

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLIII

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLIV

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLV

With respect to the said Daily People's World, as alleged in

the petition of Philip Marshall Connelly, this newspaper was published last year Monday through Friday of each week and prior to that time and for a number of years prior to April 1, 1945, said newspaper was published Monday through Saturday of each week. In order, therefore, just to examine and analyze the issues of the said paper commencing April 1, 1945 (the date when the alleged conspiracy herein was begun) it would be necessary to examine 1,770 issues of not less than four pages and as many as eight to ten pages of conventional size or tabloid size newspaper. The other publications named in the indictment herein are, on information and belief, of considerable volume probably exceeding in size that of the Daily People's World as aforesaid.

XLVI

In order to properly prepare the defense herein as above outlined, there is need for petitioner's freedom on reasonable bail so that petitioner can earn his livelihood and obtain the necessary funds required in a legal defense of the scope hereinabove stated. Petitioner cannot properly prepare a defense while petitioner and petitioner's witnesses are subject to surveillance and confinement in a room, where petitioner is unable to earn a livelihood and where the time for consultation among counsel, witnesses and petitioner is severely limited.

XLVII.

In view of the facts and circumstances hereinabove set forth, petitioner respectfully submits to the Court that petitioner is at the present time unlawfully imprisoned and restrained of petitioner's liberty; that petitioner's imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioner by the Constitution of the United States and that bail in the sum of $50,000 is so excessive and so unreasonable as to constitute an absolute denial of petitioner's right to bail and petitioner's right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

XLVIII

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

/s/ Albert Jason Lima

(verified September 4, 1951)

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at $10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

CHARGE	PENALTY	BAIL
Mail fraud and conspiracy	5 years - $10,000 (5 counts)	$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - $5,000	15,000
Transmission of threatening letters	5 years - $1,000	15,000
Transmission of threatening letters	5 years - $1,000	10,000
Perjury	5 years - $2,000	10,000
Evasion of Income Tax	5 years - $10,000	10,000
Firearms in Interstate Commerce	5 years - $2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - $10,000	10,000. reduced to 5,000
Concealing assets	5 years - $5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants

$5,000 after indictment. After conviction - $20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

(2) U. S. v. Flynn, et al

Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon, Jerome, Weinstone, Charney, Begun, Johnson. $10,000 - Increase to $50,000 sought, denied. Jones, Gannet, and Bittelman - $20,000 - Increase to $75,000 sought, denied. Mindel - $5,000 - Increase to $50,000 sought, denied. Amter - $1,000 - no increase sought.

(3) Hawaii-U.S. v. Hall, et al

Bail fixed by Commissioner for 7 defendants at $75,000. Reduced by Judge Delbert E. Metzger to $5,000. After indictment, bail fixed at $7,500.

(4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

Bail fixed by Commissioner in sum of $100,000. Reduced by Judge William Kirkpatrick in Philadelphia to $20,000.

(5) Baltimore-U.S. v. Frankfeld

Bail fixed by Commissioner at $75,000. Reduced for one defendant to $5,000; second defendant to $17,500; third defendant to $10,000.

Terminal Island Four

(Carlson v. U.S.)

Charge - Alien Communists and advocates of force and violence. Pending deportation proceedings, bail denied by Attorney General, District Court and Circuit Court. On application for writ of certiorari, bail in sum of $5,000 unanimously fixed by United States Supreme Court sitting as entire body.

EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than $10,000. The following is a tabulation:

Bail	No. of Cases
$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years an up amounts to less than $3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below $10,000:

CHARGE	PENALTY	COUNTS	BAIL
Forgery	10-$1,000	3	$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S. Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering Government obligation	5- 1,000	2	1,000
Harboring and concealing aliens	5- 1,000	1	1,500
Possession and sale of narcotics	10- 5,000	2	500
Illegal wearing uniform, U.S. Army	6mos 250	1	500
Unlawful wearing U.S. Navy Uniform	6 mos 250	3	500
Forging and uttering Government draft	10- 1,000	2	1,000
Unlawful possession of ration points	1-10,000	1	5,000
Forgery, personation and Conspiracy	10-10,000	4	3,000
Forgery, personationsand Conspiracy	10-10,000	4	2,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of writings and sugar stamps	5-10,000	5	Own Recognizance

CHARGE	PENALTY	COUNTS	BAIL
Buying and selling meat in excess of price control	5-$10,000	5	$ 5,000
Concealment of assets from trustee in bankruptcy	5- 5,000	3	10,000
Attempt to wreck a train	5- 5,000	1	5,000
Mailing scurrilous postal cards	5- 5,000	5	500
False claim of citizenship	5 10,000	1	2,500
Internal Revenue Code (Fraudulent income tax return)	5-10,000	4	
Failure to report for induction and to keep Board informed of address	5-10,000	2	2,500
Treason	death		No Bail
Transport stolen motor vehicle	5- 5,000	1	5,000
False claim of citizenship	5-10,000	1	500
Conspiracy and fraud vs. Government	5-10,000	24 reduced	10,000* (on motion to 5,000)
Mann Act	5- 5,000	1	1,000
Servicemen's Readjustment Act #44	1- 1,000	4	Own Recognizance
Transport stolen motor vehicle	5- 5,000	1	

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Juvenile Delinquency (Forgery U.S. Money Order)		1	
Mailing obscene letter	10-$ 5,000	1	$ 2,500
Engage in business of purchasing spirits for resale without basic permit		2	2,500
Transport stolen motor vehicle	5- 5,000	1	
Forging and cashing Government bonds	10- 1,000	2	2,500
Theft of mail	5- 2,000	1	1,000
Forging Government Obligation.	15- 5,000	1	500
Bank robbery, transporting interstate stolen money and flight to avoid prosecution	25-10,000	3	Held No Bond
Forging and uttering Government check	10- 1,000	2	1,000
Transporting stolen motor vehicle in foreign commerce	5- 5,000	1	3,000 (reduced to 2,000)
Anti-trust conspiracy to fix, determine, establish and maintain noncompetitive prices, etc. of fire extinguishers	1- 5,000	1	Own Recognizance (later 1,000)

CHARGE	PENALTY		COUNTS	BAIL
Theft of Government property, forging and uttering Government checks	10-	$ 10,000	4	$ 2,500
Sale and possession of narcotics	10-	5,000	2	2,500
Conspiracy, false statements to Government	5-	10,000	2	3,000
Purchase of narcotics, receiving and transporting narcotics	10-	5,000	2	2,500
Forging postal money order	5-	5,000	4	500
False statement in application for Survivors Insurance Benefits	1-	1,000	12	1,000
Evasion of Income Tax	5-	10,000	1	1,000
Migratory	6 mos	500	1	
Embezzlement, abstraction, misapplication funds H.O.L.C., and false entry in book	5-	10,000	24	Own Recognizance (later 5,000)
Evasion income taxes	5-	10,000	2	1,000 Released Own Recognizance on Motion
Evasion income taxes	5-	10,000	1	1,000
Misapplication and Embezzlement of National bank funds	5-	5,000	6	1,000
Evasion income taxes	5-	10,000	2	2,000

CHARGE	PENALTY	COUNTS	BAIL
Evasion income taxes	5- $10,000	2	Own Recongi-zance
Failure to file income tax return	1- 10,000	1	$ 2,500 Released own recognizance
Forging and uttering government checks	10- 1,000	2	1,000
Transporting stolen car	5- 5,000	1	1,000
Transmission Interstate threatening communications; mailing threatening letters	20- 5,000	4	15,000*
Sale of narcotics	10- 5,000	2	1,500
False statement in application for Federal Housing Loan		4	400
Conspiracy to defraud, make pass, utter and publish statements re: FHA Title Loan application	5- 10,000	41	2,000
Conspiracy to defraud, make pass, utter publish statements re: FHA Title Loan Application	5- 10,000	41	1,000
Perjury before ICC, making false statements on oath before examiner	5- 2,000	1	1,500

* Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Anti-trust, fixing prices for fish	1- $ 5,000	2	$ 1,000
Perjury; false statements to and concealing facts from Department of Army	5- 2,000	6	Own Recognizance
Official asking and accepting bribe	3-	14	1,000
Embezzlement and theft of U.S. property			
False documents Filed with Department of Agriculture	5- 10,000	28	Own Recognizance then 3,5000
Contempt, failure to appear before Grand Jury		1	1,000
Forging U.S. Treasury Checks	10- 1,000	8	1,000
Concealment of narcotics	10- 5,000	1	2,000
Perjury committed before Federal Grand Jury	5- 2,000	1	5,000
Mail fraud and Conspiracy	5- 10,000	5	25,000*
Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recognizance)
Accessory to bank robbery and receiving proceeds thereof	12- 5,000	2	5,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Conspiracy to commit offenses in violation of Title 47, Sec. 603; (Unauthorized publication or use of communications)	5-$10,000	1	$ 7,500
Conspiracy to commit offenses in violation of Title 47; Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
Evasion of income tax	5- 10,000	3	1,500
Evasion of income tax	5- 10,000	2	1,500
Transport interstate of stolen auto	5- 5,000	1	3,000
Evasion of income tax	5- 10,000	1	1,000
Transport forged security interstate	10- 10,000	1	2,000
Mailing obscene matter	10- 5,000	13	2,000
Illegal importation and concealment of narcotics	10- 5,000	2	2,500
Embezzlement and theft of U.S propery	10- 10,000	20	Own Recognizance

CHARGE	PENALTY	COUNT	BAIL
Concealing assets and concealing records in contempt of Bankruptcy;			
Conspiracy; mail fraud	5- $ 10,000	6	$ 5,000
Misbranded device and drug in interstate commerce	1- 1,000	1	own recognizance
False claim of citizenship	5- 10,000	2	7,500
Evasion income tax	5- 10,000	2	1,500
Transport stolen motor vehicle	5- 5,000	1	3,000
Ship misbranded drug in interstate commerce	1- 1,000	2	own recognizance
Mail fraud	5- 1,000	17	2,500
Robbery from mails	5- 10,000	1	10,000*
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5 10,000	2	1,500
Evasion income tax	5- 10,000	2	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Evasion income tax	5- 10,000	4	1,500
Conspiracy to commit offenses against U.S.; conspiracy to cause to be made false papers re: Veterans Eligibility for Home Loans under Servicemen's Readj. Act,1944	5- 10,000	9	1,000
Evasion income tax	5- 10,000	4	1,500
Failure to register firearm; Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
Interstate transport motor vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

CHARGE	PENALTY	COUNTS	BAIL
Illegal sale of narcotics	5 - $2,000	3	2,500
IRC - evasion of income tax; Making false statements (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
IRC - evasion of income tax; Making false statements (Mickey Cohen case - wife)	5 - 10,000	1	2,500
Theft of mail, obstruction of correspondence	5 - 2,000	1	1,000
Transport stolen car	5 - 5,000	1	1,000
Theft of mail by postal employee	5 - 2,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000
Perjury committed before Grand Jury	5 - 2,000	2	10,000*
Obstruction of correspondence	5 - 500	1	2,000
Transport stolen auto	5 - 5,000	1	5,000
Failure to report for induction	5 - 10,000	1	2,500
Failure to file Questionnaire	5 - 1,000	2	2,500
* Referred to in Exhibit A	-		

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Soliciting and attempting to sell auto in excess of maximum ceiling price		4	500
Concealment of assets and records in bankruptcy; conspiracy, mail fraud	5 - 10,000	3	Own Recognizance
Failed and refused to be inducted	5 - 10,000	1	2,500
Illegal possession of Marijuana	5 - 2,000	1	1,500
Conspiracy to corruptly endeavor to influence a witness and solicitation of a bribe by such witness	5 - 10,000	1	Own Recognizance
Failure to register firearm	5 - 2,000	1	1,000
Failure to register firearm	5 - 2,000	1	1,000
Servicemen's Readj. Act 1944	1 - 1,000	3	500
Transport Stolen Auto	5 - 5,000	1	1,000
Failure to report for induction	5 - 10,000	1	5,000 (reduced to 1,000)
Theft of mail by postal employee	5 - 2,000	4	1,000
Theft of mail by postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Transport stolen car	5 - $5,000	1	$2,000
Transport stolen car	5 - 5,000	1	5,000
Transport stolen car	5 - 5,000	1	1,000
Breaking into building used in part as Post Office	5 - 1,000	1	5,000
Mail fraud	5 - 1,000	11	5,000
Conspiracy; embezzlement funds National Bank	5 - 10,000	4	1,000
Theft from interstate shipment and receiving stolen goods	10- 5,000	12	5,000
Forging of postal saving certificates and uttering same	5 - 5,000	8	500
Failure to report for induction	5 - 10,000	1	1,500
Failure to report for induction	5 - 10,000	1	1,000
Theft of mail	5 - 2,000	1	1,000
Mail threatening letter	20 - 5,000	1	10,000*
Illegal possession of Marijuana	5 - 2,000	1	1,000
Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
Federal Food, Drug and Cosmetics Act (Adulterated food in Int.Com.)	1 - 1,000 -	18	Own Recognizance

* Referred to in Exhibit A

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Federal Food, Drug and Cosmetics Act (Adulterated food in interstate commerce)	1 - $ 1,000	4	Own Recognizance
Forging Government Check	10 - 1,000	2	$ 5,000
Obstruction of mail	5 - 2,000	2	5,000
Theft from interstate shipment	10 - 5,000	3	1,000
Theft on Government Reservation	5 - 5,000	2	500
Illegal wearing uniforms	6 - 250	1	1,000
Infringement of copyrighted movies	1 - 1,000	4	Own Recognizance
False claim for unemployment insurance benefits from R.R. retirement board	1 - 10,000	4	Own Recognizance
Transport stolen firearm	5 - 2,000	1	2,000
Failure to be inducted	5 - 10,000	1	1,000
Failure to be inducted	5 - 10,000	1	3,000
Forging and uttering Government check	10 - 1,000	2	1,000
Theft of mail	5 - 2,000	3	1,000
Theft of ma il by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	500
Theft of mail by postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

CHARGE	PENALTY	COUNTS	BAIL
Failure to be inducted	5 - $10,000	1	1,000
Embezzlement of funds National Bank	5 - 5,000	4	1,000
Forging and uttering forged Postal Money Order	5 - 5,000	2	250
Forging Government Check	10 - 1,000	3	1,500
Failure to register firearm	5 - 2,000	1	1,000
Causing false claim to be made to Veterans' Adminstration re: Appraisal	1 - 1,000	1	Own recognizance
False claim for unemployment insurance benefits R.R. retirement board	1 - 10,000	2	Own recognizance then 500
False claim for unemployment insurance R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Juvenile delinquency transfer of marijuana		1	500
Illegal sale of marijuana	5 - 2,000	2	2,500
Forging and uttering Government check	10 - 1,000	2	1,000
Embezzlement of funds of National Bank	5 - 500	4	Own recognizance

CHARGE	PENALTY	COUNTS	BAIL
Interstate transport falsely made security	10 - $10,000	1	2,500
False claim unemployment insurance benefits R.R. retirement board	1 - 10,000	4	Own Recognizance then 500
Impersonation as Federal Officer	3 - 1,000	4	5,000
Theft of mail by postal employee	5 - 2,000	2	500
Illegal wearing Marine Corps uniform	6 mos.-500	1	500
False claim of citizenship	3 - 1,000	1	1,000
Theft of mail by Postal employee	5 - 2,000	2	500
Illegal sale and Possession of Marijuana	5 - 2,000	2	2,000
Theft of mail by Postal employee	5 - 2,000	2	3,000
Theft of Government property	10 - 10,000	4	1,000
Illegal possession of Marijuana	5 - 2,000	1	1,000
Conspiracy to defraud and commit offense -- kick - backs on sub-contracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
WILLIAM SCHNEIDERMAN, et al.,
Defendants.

No. 21883-Crim.

ORDER

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select, An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

they may have brought to them their meals at their own expense.

3. The defendants shall be allowed to bring into said room and to maintain there such books, documents, pamphlets, and similar written or printed material as they shall desire, without censorship of any kind as to content, and the defendants shall be permitted to make and keep in said room and to deliver to their attorneys such notes, memoranda and documents as they desire, without censorship of any kind as to content. In addition, the defendants shall be permitted to bring to said room and keep there such office equipment as typewriters, and such office supplies as paper, carbon paper, pencils, pens, ink, etc.; provided, however, that none of the foregoing is intended to deprive the United States Marshal of the right to see to it that nothing other than materials of the kind permitted by this order are brought in.

4. For the purpose of dealing with problems relating to their defense, the defendants shall be allowed, in the presence of an attorney, to visit and confer with such persons as the attorney shall designate; provided, however, that such person shall furnish to the United States Marshal his name, address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

PRESENTED BY:

WALTER S. BINNS
Chief Assistant U. S. Attorney

MARGOLIS and McTERNAN
712 West Ninth Street
Los Angeles 15, California
VAndike 7153
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
HIghtower 4-1707

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

ALBERT JASON LIMA,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13447-C

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Upon reading the verified petition of the petitioner on file herein,

IT IS HEREBY ORDERED that James J. Boyle, United States Marsh for the Southern District of California appear before the above entitled Court in the courtroom of the Honorable at the United States Post Office and Court House Building, 312 Nort Spring Street, Los Angeles, California, on the 6th Day of September 1951, at 2 P.M. of said day, then and there to show cause if any he may have why he should not release from his custody or the custody such officers or agents as may have the same for and on his behalf, the body of ALBERT JASON LIMA, petitioner herein, upon such reasonable bail as may be determined by this Court.

Good cause being shown therefor, it is hereby ordered that this Order and the said petition may be served upon the respondent herein on or before September 4, 1951 at 2 P.M. of said day.

DATED: This 4th day of September, 1951.

/s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

ERNEST A. TOLIN
United States Attorney
RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California
Telephone: MAdison 7411

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

Albert James Lewis,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

NO. 13447-C

RETURN TO WRIT OF HABEAS CORPUS

I, JAMES J. BOYLE, United States Marshal for the Southern District of California, respondent herein, on behalf of myself and each and all of my agents and deputies, respectfully make the following return and answer to this Honorable Court, to the writ of habeas corpus issued pursuant to the petition for writ of habeas corpus in the above case:

I

That the petitioner, Albert James Lewis, is not unlawfully imprisoned or restrained of his liberty, and his imprisonment and detention are not illegal, arbitrary or a denial of rights secured to him by the Constitution of the United States, but said petitioner is in my custody under proper and lawful authority.

II

That said petitioner was taken into custody on July 26, 1951 in the City of San Francisco, State of California, by Special Agents of the Federal Bureau of Investigation, upon a warrant issued July 25

K:MW

pursuant to a verified complaint charging said petitioner and one William Schneiderman with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385.

III

That following said petitioner's arrest he was taken without delay on July 26, 1951, before the nearest United States Commissioner, namely, Honorabl Francis St. J. Fox, at San Francisco, California, who then and there arraigned said petitioner and set bail in the amount of $ 75,000 pending removal to this district. Thereafter, on or about the 27th day of July, 1951, an application was made to the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for reduction of said bail. Following a full hearing on said application, said District Judge modified the order of the Commissioner, and reduced bail of the petitioner to the sum of $50,000 pending removal of the petitioner to this district, and in default thereof ordered the petitioner committed to the custody of the United States Marshal in San Francisco, California, Thereafter, on July 28, 1951, the petitioner herein filed a petition for writ of habeas corpus, which petition was heard by the Honorable Louis E. Goodman, Judge of the United States District Court for the Northern District of California, for the purpose of obtaining a further reduction of bail. This petition was denied.

IV

The grand jury for the Southern District of California, in and for the Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after hearing the evidence presented, did on the 31st day of July, 1951, return an indictment against the petitioner herein and eleven other named defendants, a certified copy of which is attached hereto as Exhibit "A". That said grand jury recommended bail in the amount of $75,000 for the petitioner herein and, on the return of the indictment, said amount of bail was approved by Judge James M. Carter, before whom the said indictment was returned. On August 1, 1951, following the return of the indictment herein, the petitioner was removed from the City and County of San Francisco and brought to the County of Los Angeles, where

custody was delivered to the respondent herein, James J. Boyle, United States Marshal for the Southern District of California.

V

On the 2nd day of August, 1951, the petitioner herein was arraigned on said indictment and, at the request of petitioner herein, the plea on said indictment was continued until the 13th day of August, 1951. On the 13th day of August, 1951, at the petitioner's request, the plea on said indictment was again continued until the 20th day of August, 1951. On the 16th day of August, 1951, on petitioner's request, the Order setting said matter for plea on August 20th, 1951, was vacated and the plea on said indictment was again continued, at petitioner's request, until the 22nd day of August, 1951. On August 22nd, 1951, the plea was continued to August 29th, 1951, and on August 29th, 1951, the petitioner herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose Court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs IX to XIX of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No.13053, decided Augus 24,1951), was rendered, Judge James M. Carter did, on the 29th day o August, 1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J. McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the sam date assigned said case to Judge William C. Mathes for all further proceedings. Thereafter, on the 29th day of August,1951, a motion w made before the Honorable Wm.C.Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30, 1951, reducing the amount of bail set o said indictment to the sum of $50,000. That petitioner has not give such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm.C.Mathes and Louis E. Goodman the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of $50,000 does not, under the circumstances herein in volved, constitute an excessive requirement of bail in accordance wi the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendants in the case of United States v. Dennis, et al., who were convicted in the Southern District of New York on a violation of the same Act under which the above-mentioned indictmen was returned, and which conviction was, on June 4, 1951, affirmed by the Supreme Court of the United States. That, thereafter, said last-named persons failed to appear and surrender to serve the sentence theretofore imposed and on July 2,1951, bench warrants were ordered issued by the United States District Court for the Southern District of New York for said persons, and on July 3,1951, the bonds theretofore posted (referred to in the petition herein) by said persons were ordered forfeited by that court. The nature of the offense charged in the indictment herein is the incitement of rebellion looking to the overthrow of the government of the United States by force and violence and disloyalty to the United States. Under the facts and circumstances here involved the defendants in said indictment, including the petitioner herein, lack the usual incentive of respect to said government. Your respondent alleges that the petitioner herein is a poor security risk and that unless a substantial bail is required of said petitioner, said petitioner would not appear to answer the charges contained in the indictment herein.

IX

That in none of the cases mentioned in EXHIBITS "A" and "B" of the petition herein, save and except the two New York cases of United States v. Dennis and United States v. Flynn, is the charge the same as is contained in the indictment herein, all of said cases being routine cases involving violations of various federal statutes.

WHEREFORE, the respondent, James J. Boyle, United States Marshal for the Southern District of California, having made due and full answer to the writ of habeas corpus heretofore issued herein, pursuant to the petition for writ of habeas corpus, respectfully prays that the petition for writ of habeas corpus be dismissed and that the petitioner, _____, be remanded to respondent's custody to be dealt with according to the laws of the United States of America.

/s/ James J. Boyle
JAMES J. BOYLE
United States Marshal for the
Southern District of California

UNITED STATES OF AMERICA)
) ss.
Southern District of California)

JAMES J. BOYLE, United States Marshal for the Southern District of California, being first duly sworn, on his oath deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

/s/ James J. Boyle
JAMES J. BOYLE

SUBSCRIBED and SWORN to before me this 6th day of September, 1951

EDMUND L. SMITH
Clerk, United States District Court
Southern District of California

By /s/ Charles A. Seety Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff; v. WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETTA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, Defendants.	No. _____ CD (U.S.C., Title 18, Sec. 11 1946 Ed. U.S.C., Title 18, Sec. 371 1948 Ed.) Section 3 of the Smith Act, 54 Stat. 671 - Conspiracy to violate the Smith Act) I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously, thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETTA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stackel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the

Smith Act 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371:

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants.

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to,

"Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of

the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950 WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at

2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLETA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

Foreman

ERNEST A. TOLIN,
United States Attorney.

Stipulation and Order of Consolidation

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

No. 13436

JAMES J. BOYLE, United States Marshal,

Respondent.

AL RICHMOND,

Petitioner,

vs.

No. 13437

JAMES J. BOYLE, United States Marshal,

Respondent.

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

No. B 438

JAMES J. BOYLE, United States Marshal,

Respondent.

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

No. 13439

JAMES J. BOYLE, United States Marshal,

Respondent.

ERNEST OTTO FOX,

Petitioner,

vs.

No. 13440

JAMES J. BOYLE, United States Marshal,

Respondent.

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

No. 13441

JAMES J. BOYLE, United States Marshal,

Respondent.

CARL RUDE LAMBERT,

Petitioner,

vs.

No. 13442

JAMES J. BOYLE, United States Marshal,

Respondent.

HENRY STEINBERG,

Petitioner,

vs.

No. 13443

JAMES J. BOYLE, United States Marshal,

Respondent.

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13444
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13445
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13446
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.		No. 13447

STIPULATION

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the attorneys for petitioners above named and the attorneys for the respondent herein that the petitions for writs of habeas corpus in the above entitled causes shall be consolidated and treated as

a joint petition for writ of habeas corpus.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners

ERNEST A. TOLIN
United States Attorney

By /s/ Ray H. Kinnison
Ray H. Kinnison
Assistant United States Attorney

Attorneys for Respondent

ORDER:

It is so ordered.

/s/ Ben Harrison
JUDGE of the United States District Co

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13436-BH

AL RICHMOND,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13437-BH

PHILIP MARSHALL CONNELLY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13438-BH

DOROTHY ROSENBLUM HEALEY,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13439-BH

ERNEST OTTO FOX,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13440-BH

WILLIAM SCHNEIDERMAN,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13441-BH

CARL RUDE LAMBERT,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13442-BH

HENRY STEINBERG,

Petitioner,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

No. 13443-BH

OLETA O'CONNOR YATES, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13444-BH
ROSE CHERNIN KUSNITZ, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13445-BH
MARY BERNADETTE DOYLE, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13446-BH
ALBERT JASON LIMA, Petitioner, vs. JAMES J. BOYLE, United States Marshal, Respondent.	No. 13447-BH

MEMORANDUM OPINION

The above petitions for writs of habeas corpus were consolidated for hearing and the sole question for this court to determine in each matter is whether the bail of $50,000 is excessive and by reason thereof petitioners are unlawfully deprived of their liberty contrary to the provisions of the Eighth Amendment to the

Constitution of the United States.

It appears from the records of this court and the transcript of various proceedings that the question of bail as to some of the petitioners has been before two district judges of this district, one in San Francisco (Judge Goodman), and one in New York (Judge Dimock). (See Cr. file No. 21883 of this district).

Now through these proceedings petitioners seek to have me ignore the record, absolutely strike from my mind the separate rulings by four district judges, and indirectly hold that the bail fixed is excessive and each of said judges has abused the discretion vested in him.

Counsel for petitioners claim that bail in excess of $5,000 would be prohibitive, therefore, the court should fix bail in that amount. In other words, petitioners contend that bail should be fixed in accordance with their ability to furnish bail. To follow their argument to a natural conclusion, if they could raise bail in an amount not in excess of $10, the bail should be so fixed. If such a rule were adopted all prisoners now waiting for trial on bailable offenses would be entitled to have bail fixed in accordance with their respective abilities.

As stated in U. S. ex rel. Rubinstein v. Mulcahy etc., 155 F. (2d) 1002: "The purpose of bail before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." (See also Rule 46(c) F.R.C.P.).

How much should the bail of petitioners be to meet the requirements of the foregoing quotation? The Grand Jury that heard the evidence recommended $75,000. How can I say that all who have exercised their discretion are wrong because I may or may not agree with them?

When a person is released on bail before trial such per-

son is a calculated risk and the amount of bail resolves itself into a matter of judgment. Sometimes the courts are wrong but fortunately the defendants usually appear. The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil. Should the court ignore these facts?

Perhaps through these proceedings our reviewing courts can furnish the trial courts with a yardstick to determine the amount of bail required to assure the presence at the time of trial of the petitioners and others similarly charged. My only hope is that their judgment on such calculated risks may be correct.

I have ordered the transcript of the proceedings before Judge Mathes filed as an exhibit in these proceedings, together with the records of the court on the motions for reduction of bail before him in the criminal case; and have admitted in evidence the transcript of the proceedings in Healey et al. v. Boyle, No. 13361 to No. 13370. I have examined such proceedings and have considered the same and am unable to conclude that the amount of bail, fixed in each instance is either arbitrary or the result of an abuse of discretion. I further find that such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purpose.

The procedure followed in these matters is that outlined in the Rubenstein case (155 F. (2d) 1002). The record herein indicates that such procedure is cumbersome and unnecessarily delays the ultimate disposition of matters that are entitled to expeditious action by the courts.

I make these comments not in criticism of the present method but rather as an invitiation to our reviewing courts to

provide a more expeditious procedure. With my ruling in this case, five district judges have passed on the reasonableness of the amount of bail. If we are in error petitioners have had to languish in jail to meet the requirements of legal formalism.

The petition for writ of habeas corpus in each matter is hereby denied and the petition in each instance is hereby dismissed.

The government is ordered to submit forthwith proposed order of dismissal of said petitions.

DATED: This 12th day of September, 1951.

/s/ Ben Harrison

JUDGE

ERNEST A. TOLIN
United States Attorney

RAY H. KINNISON
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Chief of Criminal Division

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Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, v. JAMES J. BOYLE, United States Marshal, Respondent.	Nos. 13436/13447 ORDER DENYING PETITIONS FOR WRITS OF HABEAS CORPUS AND DISCHARGING ORDERS TO SHOW CAUSE WHY WRITS OF HABEAS CORPUS SHOULD NOT BE GRANTED

The above-entitled matters came on regularly for hearing on September 6, 1951, before the Honorable Ben Harrison, Judge presiding, on Orders to Show Cause Why Writs of Habeas Corpus should not be granted, the petitioner Philip Marshall Connelly being represented by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall, Esq. and the remaining petitioners by their attorneys Margolis and McTernan, Esqs., by Ben Margolis, Esq., and the respondent, James J. Boyle, being represented by his counsel, Ernest A. Tolin, United States Attorney for the Southern District of California, and Ray H. Kinnison, Assistant United States Attorney for the Southern District of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

Court having ordered upon the stipulati . of the attorneys for the respective parties that the petitions for writs of habeas corpus be consolidated and treated as a joint petition for writ of habeas corpus; and the Court having read the petitions for Writs of Habeas Corpus on file, the Return thereto filed by the respondent to said petitions for Writs of Habeas Corpus herein; and the Court finding that on July 31, 1951, and prior to the hearing herein, a True Bill of indictment was returned in this Court before Judge James M. Carter, by the Grand Jury for the Southern District of California, charging the petitioners and others with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C. (1948 ed.) 2385, and said indictment having been ordered filed under Case No. 21883-CD, and on recommendation of said Grand Jury, Judge James M. Carter then set bail for the petitioner William Schneiderman in the amount of $100,000 and in the amount of $75,000 for the remaining petitioners, and thereafter, on the 7th day of August, 1951, petitioners filed with said Judge James M. Carter a motion to reduce the amount of bail; that the said Judge James M. Carter on August 29, 1951 disqualified himself from any further proceedings in the prosecution of the petitioners herein including proceedings on bail; that the said proceedings were then assigned by Chief Judge Paul J. McCormick to Judge William C. Mathes and the aforesaid motions to reduce bail came on for hearing before the said Judge William C. Mathes, and following a full hearing on said motions Judge William C. Mathes on August 30, 1951 did reduce the amount of bail for each of the petitioners to $50,000, and the Court having taken testimony on the petition herein and having heard arguments, and the Court being fully advised in the premises, and it appearing to the satisfaction of the Court, and the Court finding for the reasons aforesaid that the relief prayed for in the aforesaid petitions for Writs of Habeas Corpus should not be granted, that the

orders to show cause why the petitions for writ of habeas corpus should not be granted should be discharged, and that said Petitions for Writs of Habeas Corpus should be denied, and said cause having been submitted to the Court for decision;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid Petitions for Writs of Habeas Corpus heretofore filed in the above entitled matters be, and the same hereby are, denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Orders to show Cause why the Petitions for Writs should not be granted be, and the same hereby, are discharged.

DATED: This 6th day of September, 1951.

/s/ Ben Harrison
United States District Judge

Received copy of the within Order Denying Petitions for Writs of Habeas Corpus, Discharging Orders to Show Cause, and Dismissing Writ of Habeas Corpus this 6th day of September 1951, and approved as to form.

Ben Margolis

Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By
Ben Margolis

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Attorneys for remaining Petitioners-Appellants

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners-Appellants,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

Nos. 13436/13447

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the petitioners-appellants above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order denying the petitions for writs of habeas corpus herein and discharging the orders to show cause why the petitions for writs should not be granted, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 6th day of September, 1951.

DATED: This 6th day of September, 1951.

/s/ Ben Margolis

Ben Margolis

/s/ Daniel G. Marshall

Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis

Ben Margolis

/s/ Leo A. Sullivan

Leo A. Sullivan

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Attorneys for remaining
Petitioners

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL, CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners,

vs.

JAMES J. BOYLE, United States Marshal,

Respondent.

Nos. 13436/13447

DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the record on appeal herein a complete record of all the proceedings and evidence in the above entitled causes including the petitions for writs of habeas corpus, the orders to show cause, the stipulation and order treating the petitions as a joint petition for writ of habeas corpus, the return of the respondent, the reporter's transcript of hearing on September 6, 1951, the order denying the petitions and discharging the orders to show cause, the notice of

appeal, this designation of the record and any stipulations between the parties relative to the record on appeal herein or the argument of the appeal.

DATED: September 6, 1951.

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo. A. Sullivan

Attorneys for remaining Petitioners

Agreed to:

United States Attorney

LIBRARY
SUPREME COURT, U.S.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, et al.,

Appellants,

vs.

JAMES J. BOYLE, United States Marshal,

Appellees.

No. 13,009

Oct. 3 1951

Appeal from the United States District Court for the Southern District of California Central Division.

Before MATHEWS, HEALY and BONE, Circuit Judges.

MATHEWS, Circuit Judge.

I

Appellants were indicted for violating § 3

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1. Appellants are Loretta Starvus Stack, Al. Richmond, Philip Marshall Connelly, Dorothy Rosenblum Healey, Ernest Otto Fox, William Schneiderman, Carl Rude Lambert, Henry Steinberg, Oleta O'Connor Yates, Rose Chernin Kusnitz, Mary Bernadette Doyle and Albert Jason Lima. Connelly, Healey, Schneiderman and Steinberg have been here before. See Schneiderman v. United States, 9 Cir., 119 F. 2d 500, reversed om 320 U.S. 118; Alexander v. United States, 9 Cir., 173 F. 2d 865, 867; Id., 9 Cir., 181 F. 2d 480; Doran v. United States, 9 Cir., 181 F. 2d 480; Connelly v. United States District Court, 9 Cir., ___ F.2d _____.

of the Smith Act,[2] were allowed bail by District Judge Mathes in the sum of $50,000 each and, in default of furnishing such bail, were detained in the custody of appellee, United States Marshal James J. Boyle. Alleging that the bail required of them was excessive, appellants petitioned the District Court for writs of habeas corpus. Orders to show cause were issued, returns were filed, a hearing was had before District Judge Harrison, an order was entered denying the petitions, and appellants have appealed from the order. We affirm the order for the following reasons:

First. Habeas corpus is not a proper remedy for one charged, as appellants were and are, with an offense against the United States and detained, as appellants were and are, in the custody of a United States Marshal in default of furnishing bail alleged to be excessive.[3] The proper remedy in such a case is a motion for

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2. 18 U.S.C.A., 1946 Edition, § 11.

3. We regard as erroneous, and decline to follow, United States ex rel. Rubinstein v. Mulcahy, 2 Cir., 155 F. 2d 1002, cited by appellants. The holding in the Rubinstein case was not supported by any of the cases cited therein (Johnson v. Hoy, 227 U.S. 245; Colver v. Skeffington, D.C.Mass.; 265 F. 17, reversed in Skeffington v. Katzeff, 1 Cir., 277 F. 129; People ex rel. Sammons v. Snow, 340 Ill. 464, 173 N.E. 8; Deliz v. Warden of City

reduction of bail.[4] Therefore, regardless of whether the bail required of appellants was excessive, their petitions for writs of habeas corpus were properly denied.

Second. Judge Harrison did not find that the bail required of appellants was excessive. Instead, he found that the bail required was "necessary to assure the presence of (appellants) in the further proceedings in the criminal case."[5] We cannot say that the finding was erroneous. Therefore we should affirm the order, even

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Prison, 260 App.Div. 155, 21 N.Y.S. 435). The question here presented--whether habeas corpus is a proper remedy for one charged with an offense against the United States and detained in the custody of a United States Marshal in default of furnishing bail alleged to be excessive--was raised in Johnson v. Hoy, but the Supreme Court found it unnecessary to decide the question and did not decide it. The question was not involved or decided in the Skeffington case, the Sammons case or the Deliz case.

4. See, for example, United States v. Averett, D.C.W.D.Va., 26 F. 2d 676. See, also, Smith v. Lee, D.C. N.D.N.Y., 13 F. 28.

5. See Rule 46 (c) of the Federal Rules of Civil Procedure.

if we considered habeas corpus a proper remedy for one charged with an offense against the United States and detained in the custody of a United States Marshal in default of furnishing bail alleged to be excessive, which we do not.

Order affirmed.

BONE, Circuit Judge, concurring in Judge Mathews' Opinion

I am in agreement with the views expressed by Judge Mathews. Despite the traditional and historic place in our Federal system of law which the Great Writ occupies, it is more than strange that one hundred and fifty seven years elapsed (1789-1946) before a Federal appellate court reached the conclusion (and squarely held) that a person under indictment could resort to Habeas Corpus proceedings to secure reduction of bail fixed by a district court.

HEALY, Circuit Judge, Dissenting

I think habeas corpus is available to one detained in custody under bail claimed to be excessive. See 28 USCA Sec.2241 (c)(1) and (3). The government concedes that it is, and the only cases bearing on the subject support that view.[1] See particularly, United States ex rel. Rubinstein v. Mulcahy, 2 Cir., 155 F. 2d 1002. If it were otherwise, no adequate remedy for the imposition of excessive bail would exist. Yet the right involved is one guaranteed by the Constitution, the Eighth Amendment of which provides that "excessive bail shall not be required." Of course a motion for reduction addressed to the court which has fixed the amount would be a proper course, but in this instance it would obviously be futile. Judge Mathes, who is in charge of the cases below and who fixed the bail, did so after a full hearing of all matters since urged in the habeas corpus proceedings now before us. One can hardly expect him to change his views on a second hearing of the same facts.

The petitioners are accused persons, only, who have not yet been tried on the charge against them, and they are entitled to the usual presumption of innocence appertaining to those of that status. Measured at least by the standards followed by the federal courts elsewhere, their claim that the bail fixed in their cases is excessive is worthy of serious attention. It is notable that in

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1. The cases of United States v. Averett and Smith v. Lee, cited in note 4 of the majority opinion, do not support the view expressed in the text of the opinion.

respect of the communist groups rounded up and indicted under the Smith Act in other places in the country bail has not been fixed in anything approaching the amount here required. It is debatable, too, whether the factors required to be considered in determining the amount of bail, as prescribed in Rule 46(c) of the Federal Criminal Rules, were observed in these cases.[2]

The claim of the petitioners should be considered by this court unfettered by the holding of the majority that no court other than the one which fixed bail has any authority to consider whether the amount is excessive.

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2. Rule 40(c) reads: "Bail . . . .(c) Amount. If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commissioner or court or judge or justice will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant."

Office-Supreme Court, U.S.
FILED
OCT 25 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

- - - - -

No. 400

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LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERLAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA,

Petitioners,

vs.

JAMES J. BOYLE, United States Marshall,

Respondent

- - - - -

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

- - - - -

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the decision and judgment of the United States Court of Appeals for the Ninth Circuit, rendered October 3, 1951, affirming an order of the United States District Court in and for the Southern District of California, Central Division, rendered September 12, 1951, denying petitioners' petitions for writs of habeas corpus and discharging orders to show cause why writs of habeas corpus should not be granted.

Jurisdiction

The judgment of the Court of Appeals was rendered and filed October 3, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 2101(c).

Opinions Below

The District Court rendered a written opinion on September 12, 1951, which is unreported. The opinion of the Court of Appeals is also unreported.

Constitutional and Statutory Provisions Involved

The Eighth Amendment to the Constitution of the United States provides:

"Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishment inflicted."

Federal Rules of Criminal Procedure, Rule 46, 18 U.S.C.A. provides in part as follows:

"(a) Right to bail.

"(1) Before Conviction. A person arrested for an offense not punishable by death shall be admitted to bail. A person arrested for an offense punishable by death may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.***

"(c) Amount. If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commissioner or court or judge or justice will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant.***

Statement of the Matter Involved

On July 25, 1951, Howard V. Calverley, a United States Commissioner in the Southern District of California, issued

separate warrants for the arrests of petitioners pursuant to complaints signed by agents of the Federal Bureau of Investigation charging each of the petitioners with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671; 18 U.S.C. Sections 371, 2385.

Early on the morning of July 26, 1951, the F.B.I. agents proceeded to arrest petitioners. Seven were arrested in San Francisco. Their names are Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Al Richmond, Ernest Otto Fox, Loretta Starvus Stack and Mary Bernadette Doyle. Four were arrested in Los Angeles on the same day; their names are Dorothy Rosenblum Healey, Philip Marshall Connelly, Rose Chernin Kusnitz and Henry Steinberg. One was arrested in New York; his name is William Schneiderman.

In Los Angeles the persons arrested were arraigned before the United States Commissioner on July 26, 1951. The United States Attorney informed the Commissioner that a grand jury would be convened on August 1, 1951 and that it would take some time for the said grand jury to consider the evidence. His estimate was at first three weeks, later reduced to two. At the Government's request, bail was fixed by the Commissioner in the sum of $75,000 for each person pending the preliminary examination set for August 9, 1951. Since none of the persons arrested in Los Angeles were financially able to furnish the bail fixed by the Commissioner, each was confined in the County Jail of the County of Los Angeles in the custody of the United States Marshal, the respondent herein.

In San Francisco, the seven persons arrested were brought on July 26, 1951 before a United States Commissioner in the Northern District of California. The Government requested that bail be denied. This the Commissioner declined to do. The Government then

requested bail in the sum of $75,000 for each person. The Commissioner acceded to that request except in the cases of Mary Bernadette Doyle and Loretta Starvus Stack where bail was fixed in the sum of $2,500, and in the case of Oleta O'Connor Yates, at $7,500. The last three persons furnished bail and were released from custody. The others were unable to furnish bail and were confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal for the Northern District of California.

On the next day, July 27, 1951, the persons in San Francisco who were in custody with bail fixed at $75,000 moved in the United States District Court for the Northern District of California for a reduction in bail; at the same time, the United States Attorney moved in the same Court for an increase in bail for the three persons who had been released on bail in accordance with the order of the United States Commissioner. These motions came on for hearing before the Honorable Louis E. Goodman, a Judge of the United States District Court for the Northern District of California. The said District Judge, ruling that the narrow question before him was the amount of bail which should be fixed pending removal of the arrested persons to the Southern District of California where the complaints had originally issued, fixed bail in the sum of $50,000 for the seven individuals. As a result, the three persons who had originally been released were confined along with the four others in the County Jail in the custody of the acting United States Marshal.

On July 28, 1951, each of these seven individuals filed a petition for writ of habeas corpus to the said Honorable Louis E. Goodman maintaining that they were illegally confined and praying for their release on reasonable bail. The said petitions were

denied on July 28, 1951, the District Court adhering to its ruling of the previous day.

In New York, William Schneiderman was held in $100,000 bail by the United States Commissioner pending removal proceedings, which bail was later reduced on August 7, 1951, by Honorable Edward J. Dimock, a Judge of the United States District Court for the Southern District of New York to $50,000.

In Los Angeles, on July 27, 1951, petitions for writs of habeas corpus for the four persons there arrested were filed in the United States District Court for the Southern District of California, Central Division. Orders to show cause why the petitions should not be granted were issued by the Honorable Leon R. Yankwich, a Judge of the said District Court, and made returnable on July 31, 1951 at 10 A.M.

When counsel for the four petitioners appeared in the courtroom of the aforesaid District Judge on July 31, 1951 at 10 A.M., the Court was informed by the United States Attorney that an indictment had been returned by the grand jury that morning charging the twelve persons above named with conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671; 18 U.S.C. sections 371, 2385. In view of the return of the indictment on July 31, the said Honorable Leon R. Yankwich was compelled to hold that the habeas corpus proceedings had become moot and the orders to show cause why the petitions for writs of habeas corpus should not be granted were thereupon discharged.

On the said July 31, 1951, and immediately after the aforementioned proceedings were terminated, the four Los Angeles petitioners were brought before the Honorable James M. Carter, a

Judge of the United States District Court for the Southern District of California, Central Division, before whom the indictment had been returned. At the outset, an oral motion was made to disqualify the said Judge upon the grounds of personal bias and prejudice against the said petitioners and in favor of the adverse party. The said oral motion was denied and petitioners advised the Court that they would file a formal affidavit of bias and prejudice. Thereupon, the Court announced that it was fixing bail in an amount recommended by the grand jury. A notation upon a copy of the indictment indicated the sum of $75,000 next to the names of all defendants except the defendant William Schneiderman, where the notation was $100,000. These notations were unsigned.

On August 1, 1951, the sever petitioners in San Francisco were removed from the County Jail therein and brought to the County of Los Angeles and confined in the County Jail of the County of Los Angeles together with the four Los Angeles petitioners, all in the custody of the United States Marshal, the respondent herein. On the next day, August 2, 1951, the seven were brought before the said Judge James M. Carter and arraigned. At the time of the arraignment, no reference was made to bail and all the said petitioners continued confined in the County Jail.

On August 6, 1951, all of the petitioners except William Schneiderman moved in the United States District Court to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount. Under the rules of the Court this motion was required to come before the said Judge James M. Carter.

Before the argument on the motion to fix or reduce bail commenced, the aforesaid petitioners except William Schneiderman

jointly filed an affidavit of personal bias and prejudice pursuant to the provisions of 28 U.S.C. Section 144, and requested the said Judge James M. Carter to disqualify himself and to proceed no further with respect to the bail proceedings. The said Judge on August 7, 1951 declined to disqualify himself and held the affidavit of bias and prejudice legally insufficient.

In the case of one of the petitioners, Philip Marshall Connelly, a request was thereupon made that the Court stay its ruling on the motion to fix or reduce bail until the question of the Court's disqualification could be tested by appropriate appellate proceedings. This request was granted and the Court took the said Connelly motion under submission but withheld a ruling pending determination by the Court of Appeals for the Ninth Circuit.

In the case of the other petitioners except William Schneiderman, the motion to fix or reduce bail was thereupon argued before the said Judge James M. Carter and on August 8, 1951, the said Judge James M. Carter fixed bail for all the said petitioners in the sum of $50,000 except the petitioners Oleta O'Connor Yates and Loretta Starvus Stack where bail was fixed in the sum of $25,000. Since all of the petitioners were wholly unable to furnish bail in the amounts fixed as aforesaid, they remained confined in the County Jail of Los Angeles in the custody of the respondent.

On August 13, 1951, the aforesaid petitioners filed separate petitions for writs of habeas corpus claiming that they were illegally detained because the bail fixed by the said Judge James M. Carter was excessive and praying for their release on reasonable bail. The writs were issued and made returnable before Honorable William C. Mathes, a Judge of the United States District Court for the Southern District of California, on August 15, 1951.

and after hearing, the said Judge Mathes by orders dated August 17 1951, dismissed the aforesaid petitions and discharged the writs. Notices of Appeal from the aforesaid orders were filed on August 18, 1951.

In New York, the petitioner, William Schneiderman, who had not contested the removal proceeding, was on August 14, 1951 removed from New York to Los Angeles where he arrived on August 17, 1951. The said petitioner was on that day arraigned before Judge James M. Carter, and remanded to the custody of the respondent herein. No reference was made to bail at the time of arraignment.

On August 24, 1951, the Court of Appeals for the Ninth Circuit rendered its decision on the application of the petitioner Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter and held that the aforesaid affidavit of bias and prejudice was legally sufficient and ordered the said Judge to proceed no further respecting the said petitioner's bail proceedings or in connection with his prosecution under the indictment. Connelly v. The United States District Court, etc., No. 13,053, August 24 1951. A copy of the opinion will be submitted to the Court on the filing of this petition.

In view of the decision of the Court of Appeals for the Ninth Circuit on the sufficiency of the joint affidavit of bias and prejudice, a serious question was created as to the power or jurisdiction originally of the said Judge James M. Carter to fix or reduce bail for the other petitioners herein who jointly signed the affidavit of bias and prejudice. In order to remove this issue from the bail proceedings on appeal the petitioners decided to withdraw their appeals. On August 27, 1951, counsel for the respective parties stipulated in writing to dismiss the appeals

The said stipulation was filed with the Clerk of the Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court, and thereafter, upon the said stipulation, the mandate of the Court issued dismissing the appeals.

Thereupon, and on August 29, 1951, all of the petitioners herein were brought before Judge James M. Carter and the said Judge formally disqualified himself from any further proceedings in the cause. On the same day, the Chief Judge of the District Court, Honorable Paul J. McCormick, assigned the cause to the aforesaid Honorable William C. Mathes.

On August 29, 1951, all of the petitioners appeared before the Honorable William C. Mathes. In view of the disqualification of the aforesaid Judge James M. Carter, Judge Mathes ruled that he would entertain a renewal of the motion to fix or reduce bail on behalf of all the petitioners except petitioners Connelly and Schneiderman, and as to the said two petitioners, would hear the aforesaid motion in the first instance on their behalf.

After hearing, and on August 30, 1951, the said Judge William C. Mathes fixed bail for each of the petitioners in the amount of $50,000.

On September 4, 1951, each of the petitioners filed their petitions for writs of habeas corpus claiming that their detention was illegal and arbitrary; that the bail fixed was so excessive so unreasonable as to constitute a denial of their right to bail under the Constitution and laws of the United States; and a deprivation of their right to properly defend themselves against the charges laid in the indictment in accordance with due process of law.

After return and hearing held on September 6, 1951, before the Honorable Ben Harrison, a Judge of the United States District Court for the Southern District of California, the said petitions, treated as a joint petition upon the stipulation of the respective parties, were denied on September 12, 1951 and the orders to show cause why the petitions should not be granted discharged.

On September 22, 1951, the petitioners appealed to the Court of Appeals for the Ninth Circuit from the order denying their petitions for writs of habeas corpus and discharging the aforesaid orders to show cause, and said appeal came on for argument before the said Court on September 20, 1951, and the said order of the District Court was thereafter affirmed by the said Court of Appeals for the Ninth Circuit by a divided Court. A copy of the opinion of the said Court will be submitted to this Court with the petition herein.

o.

The transcripts of the records on appeal before the Court of Appeals for the Ninth Circuit for each of the petitioners herein (identical except as to variations resulting from the statements made concerning their individual backgrounds) will be submitted to this Court with the petition herein. The said transcripts of the records on appeal (named hereafter as "The Transcripts") will be referred to in the petition herein and are incorporated in this petition by reference and made a part hereof as if fully set forth at length. The transcripts show that only questions of law are involved in these proceedings; there have been no controverted issues of fact. The principal basis for the rulings of the lower courts herein was the failure of four persons to appear in the Southern District of New York after their judgments of conviction were affirmed by this Court in Dennis, et al v. United States, although these petitioners in Los Angeles have not been shown to have any connection, directly or indirectly, with the aforesaid persons.

The petitioners have resided in California for 30 years (Healey); 9 years (Stack); 44 years (Lima); 37 years (Kusnitz); 21 years (Lambert); 15 years (Steinberg); 41 years (Yates); 6 ye (Fox); 46 years (Doyle); 13 years (Richmond); 39 years (Connelly) 16 years (Schneiderman). A more detailed statement relative to the residences of petitioners is contained in their individual petitions set forth in the Transcripts.

All of the petitioners are citizens of the United States except petitioner Fox who was brought to this country at the age of four and has been for the past fifteen years married to a citizen of the United States.

The family relationships of petitioners are as follows: Healey -- married, son, age 8, mother, age 66, one brother and two sisters; Stack -- maried, son, age 8 and daughter, age 3, older child chronically ill; Lima -- married, three children, ages 8, 2 and 2 months; Kusnitz -- married, daughter, age 11; Lambert -- married; Steinberg -- married, four daughters, ages 4, 9, 9, 11, mother, age 65 and one sister; Yates -- married; Fox -- married; Doyle -- unmarried; Richmond -- married, two minor children; Connelly -- married, daughter; Schneiderman.-- married, daughter, age 7.

The financial ability of the petitioners is as follows: Healey -- $50 per week, husband a co-defendant, no assets except automobile; Stack -- between $40 and $45 per week; husband $60 to $65 per week, no assets except small commercial bank account and automobile; Lima -- $60 per week, no assets except automobile; Kusnitz -- $30 per week and $25 expenses, husband approximately $550 per month, own home, paid $12,000, mortgage about $8,000,

about $500 in bank; Lambert -- $50 per week, wife $40 per week, no other assets except lot worth $750; Steinberg -- $58.50 per week, no assets except home and automobile; Yates -- $40 per week, owns home, purchase price $4,000, no other assets except automobile and $500 in bank; Fox -- $40 per week, wife, $60 to $65 per week; Doyle -- $47 per week, no other assets; Richmond -- $50 per week, purchasing home he lives in; Connelly -- $50 per week; no other assets; Schneiderman -- $50 per week and expenses, no other assets.

The character of the petitioners is reflected in the following: Six of the petitioners (Richmond, Doyle, Yates, Lambert, Kusnitz and Stack) have no previous criminal record of any kind. There is a deportation proceeding pending against Fox. Steinberg was charged with civil and criminal contempt in 1948 and convicted, but his conviction was reversed by the Court of Appeals for the Ninth Circuit. He also was charged with violation of a County Registration Ordinance, but upon motion to dismiss the complaint against him, the Ordinance was held unconstitutional and he was released. Lima was arrested once in 1935 for picketing activities, but his trial resulted in a jury disagreement and the charges were dismissed on motion of the prosecutor. Healey was arrested for picketing activities in 1934. Her conviction for civil and criminal contempt, in 1949 as in the case of Steinberg, was reversed by the Court of Appeals for the Ninth Circuit. Petitioners Lambert, Richmond, Lima and Steinberg served in the military forces of the United States during World War I or World War II and all have honorable discharges from the armed services. Petitioners Yates, Doyle, Healey and Steinberg have either held public office in the State of California or been candidates for public office in the State. A more detailed statement relative to the character of petitioners is contained in their individual petitions set forth in the Transcripts.

The conditions of health and medical attention required by petitioners are as follows: Petitioner Lambert is prone to tuberculosis and suffers from migraine headaches and is under the regular care of a physician for that malady. Petitioner Healey suffers from a similar condition. Petitioner Doyle suffers from a pituitary tumor which has required abdominal surgery and deep x-ray therapy. She was recently advised of the existence of a uterine tumor, and has suffered a heart attack and bronchial disorders from these serious organic conditions. Petitioner Yates has a heart condition diagnosed as excessive palpitation, requires regular treatment with medication and use of pheno-barbitol, has suffered a collapse of the left side of her lung, and has arthritis in the fingers of one hand and in her knee. Petitioner Stack has a thyroid deficiency, a uterine tumor which requires immediate surgical treatment, and suffers from chronic attacks of tonsilitis. Petitioner Connolly suffers from multiple glandular deficiency and hypertensive heart disease. He is in need of special diet, and frequent medical observation of his blood pressure and fast heart. A more detailed statement of the health conditions of the petitioners is contained in each of their petitions as set forth in the Transcripts.

Petitioners hereby state and represent to this Court that they intend in good faith to remain and that they will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that they do not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioners believe that they are not guilty of the offense charged in the indictment and they intend to vigorously prosecute their defense. Petitioners believe that upon the trial of this

indictment herein, they will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive them of liberties secured to them by the Constitution of the United States.

Petitioners further aver that when they have on prior occasions been involved in legal proceedings as aforesaid, they have been released on bail, or on their own recognizance (Healey, Steinberg and Fox), and even after conviction and on appeal have always attended all proceedings whenever required. The petitioner Healey was sentenced to 18 months imprisonment after her conviction for contempt as aforesaid and yet was released on bail in the sum of only $500 pending appeal, which bail was finally exonerated after the conviction was reversed on appeal as aforesaid.

Prior to the arrests herein as aforesaid, the public press had openly reported that Smith Act prosecutions were contemplated soon in various parts of the country including California. Some of the petitioners had been followed by agents of the Federal Bureau of Investigation, had been aware that arrests were pending, but they had made no attempt to leave the area, to avoid detection or to avoid arrest and had at all times intended to be present and defend themselves in any trial which might eventuate. Details of the aforesaid are contained in the petitions set forth in the Transcripts.

The onerous limitations which are placed upon petitioners in preparing for trial while confined under the excessive bail fixed herein are set forth in the concluding paragraphs of each of the petitions contained in the Transcripts. The wide scope of the trial under the indictment will include the examination of programs, policies, and ideas embodied in hundreds of books,

publications, newspapers and periodicals, the examination of files, records and libraries, the preparation of scores of witnesses, conferences with attorneys and witnesses, the examination and analysis of the record in United States v. Dennis including some 600 exhibits, and other multifold tasks required as a result of broad charges contained in this conspiracy indictment. Even if released on reasonable bail, the problems that the petitioners will encounter in preparing for trial on the date set by the District Court will be almost insuperable.

Your petitioners are wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioners in the County Jail have unlawfully deprived petitioners of liberty and abridged the rights guaranteed petitioners by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed to the petitions contained in the Transcripts and made a part hereof clearly reveal that petitioners have been denied equal justice by the action of the District Court in fixing bail at the grossly excessive sum of $50,000.

Petitioners are advised by counsel that under the Constitution petitioners are entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioners are entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

In view of the facts and circumstances hereinabove set forth petitioners respectfully submit to the Court that petitioners are at the present time unlawfully imprisoned and restrained of their

liberty; that petitioners' imprisonment and detention are illegal, arbitrary and denial of rights secured to petitioners by the Constitution of the United States and that bail in the sum of $50,000 for each petitioner is so excessive and so unreasonable as to constitute an absolute denial of petitioners' rights to bail and petitioners' rights as a matter of due process of law to properly defend themselves against the charges which have been brought against them.

Questions Presented.

1. Whether, under the circumstances herein, habeas corpus was a proper remedy upon petitioners' claim that they were illegally confined on excessive bail in violation of the Eighth Amendment.

2. Whether the amounts of bail required for each of the petitioners herein is excessive in violation of the Eighth Amendment to the United States Constitution.

3. Whether the amounts of bail required for each of the petitioners herein constitutes in effect a denial of bail and deprives petitioners of their liberty without due process of law in violation of the due process clause of the Fifth Amendment to the United States Constitution.

4. Whether the amounts of bail required for each of the petitioners herein deprives them of a fair opportunity to defend themselves against the charges contained in the indictment without due process of law in violation of the due process clause of the Fifth Amendment to the United States Constitution and in violation the provisions of the Sixth Amendment to the United States Constitution.

5. Whether Rule 46 of the Federal Rules of Criminal Procedure as construed and applied by the Court below is unconstitutional and deprives the petitioners of their freedom of speech, press and assembly guaranteed by the First Amendment to the United States Constitution.

6. Whether Rule 46 of the Federal Rules of Criminal

Procedure as construed and applied by the Court below constitutes a bill of attainder in violation of Article I, Section 9, Clause 3 of the United States Constitution.

Reasons for Granting the Writ

There has never been any denial of the allegations in their petitions for release on reasonable bail as to their residence, family status, financial standing, reliability of attendance at legal proceedings, conditions of health and medical attention required. Tested by these undenied allegations, and by the factors prescribed in Rule 46(c) of the Federal Rules of Criminal Procedure, as well as the provisions of the Constitution, these petitioners are entitled to their release on nominal bail pending the trial of the indictment returned against them. As District Judge Mathes stated in one of the proceedings before him: "... I think $5,000 would assure the presence of any of these defendants insofar as their will to come is concerned" (transcript of habeas corpus proceedings before Judge Mathes, August 15, 1951, p.126).

Nevertheless, bail has been fixed for each of the petitioners in the sum of $50,000. Such an amount, on the record here, is clearly excessive and can have no other purpose than to deny petitioners their freedom on bail pending their trial under the indictment. Even the right to raise the claim that their constitutional rights have been infringed by the exaction of excessive bail has been denied by the Court of Appeals below.

The questions presented, therefore, in the proceedings before this Court raise serious constitutional questions of great public importance and affect directly the administration of justice in the federal courts over which this Court exercise a supervisory jurisdiction. In addition, a direct conflict exists between the decision of the Court below and the Court of Appeals for the Second Circuit on the issues involved.

I.

THE DECISION BELOW IS IN CONFLICT WITH THE DECISION BY THE COURT OF APPEALS FOR THE SECOND CIRCUIT IN UNITED STATES EX REL RUBINSTEIN V. MULCAHY, 155 F.2d 1002 (1946). THE WRIT OF HABEAS CORPUS HAS TRADITIONALLY ISSUED UPON A CLAIM THAT PERSONS WERE ILLEGALLY CONFINED ON EXCESSIVE BAIL.

The majority of the Court below have held in effect that one who is confined pending the trial of an indictment against him in the federal courts under excessive bail can have no resort to the writ of habeas corpus or any review of his claim that his constitutional rights have been infringed. His sole recourse is an appeal on constitutional grounds to the very court which fixed the bail in the first instance. The end result is a virtual suspension of the writ of habeas corpus (compare, Article I, Section 9, clause 2 of the Constitution) in all cases involving the claims of persons confined in jail under excessive bail. Such a ruling is contrary to the applicable decisions of this Court, and does violence to the common law principles which define the use of the historic "writ of freedom" as authorized by the laws of the United States, 28 U.S.C. Section 2241.

As early as 1275, it was stated in the Statute of Westminster, (3 Edw. I, C. 15):

> "And if any withhold Prisoners replevisable, after that they have offered sufficient Surety, he shall pay a grievous Americiament to the King; . . ."

Sir James Stephen, in his "History of the Criminal Law of England" (London, 1883, Vol. I, p. 234), states that "this statute was for 550 years the main foundation of the law of bail."

In 1679 the famous Habeas Corpus Act was enacted (31 Ch. II C. 2). Of this Act, Holdsworth states, in his "History of English Law", Vol. IX, pp. 118-119:

> "The success of the Act in effecting its object is illustrated by the desire of James II to get it repealed. His judges did their best to evade it by requiring prisoners, entitled to bail, to find security in such excessive sums of money that they were unable to furnish it. This abuse was the subject of one of the clauses of the Bill of Rights; and the law as thus settled by the Act and by the Bill of Rights was not altered for more than a century."

The clause of the Bill of Rights of 1689 to which Holdsworth refers is the source of the 8th Amendment to the Constitution of the United States. In re Kemmler, 136 U.S. 436, 446-447. It should also be noted that provisions similar to the provisions of the 8th Amendment to the Constitution are incorporated in the constitutions of 47 of the 48 states. Illinois is the only state which does not have such a provision in its constitution. In that state, however, excessive bail is forbidden, and may be reduced on habeas corpus. People ex rel Salmone v. Snow, 340 Ill. 468; 173 N.E. 8; 72 A.L.R. 798, 1930.

In McNally v. Hill, 293 U.S. 131, this court had occasion to define the term, habeas corpus, as it is used in the statutes authorizing the courts to issue the writ. In one of the footnotes contained in Justice Stone's opinion (written for a unanimous court), it was stated (page 137, footnote 1):

> "The Habeas Corpus Act appears from its preamble to have been especially, although not exclusively, directed at cases in which the King's subjects were detained in custody upon a criminal charge where by law they were entitled to bail. It authorized the writ to issue, directed to any sheriff or gaoler, or other person 'for any person in his or their custody.' It commanded

the production of the prisoner before the judicial officer to whom the writ was to be returned and directed that such officer 'shall discharge' the 'prisoner from his imprisonment' with provision for taking bail in his discretion, 'unless it shall appear' to him that the petitioner 'is detained upon a legal process, order or warrant out of some court that hath jurisdiction of criminal matters' or upon warrant for an offense 'for which by law the prisoner is not bailable.' 31 Car. II, Sec. II (2), Sec. III (6) (7)."

In ex parte Watkins, 3 Peters 193, this court, speaking again of the nature and uses of the writ of habeas corpus under the English Habeas Corpus Act, stated:

"English judges, being originally under the influence of the crown, neglected to issue this writ where the government entertained suspicions which could not be sustained by evidence; and the writ when issued was sometimes disregarded or evaded, and great individual oppression was suffered in consequence of delays in bringing prisoners to trial. To remedy this evil the celebrated Habeas Corpus Act of the 31st of Charles II, was enacted, for the purpose of securing the benefits for which the writ was given."

In United States v. Hamilton, 3 Dallas 17, this Court admitted a prisoner to bail on a writ of habeas corpus after the prisoner had been confined upon the warrant of a district judge in the state of Pennsylvania, charging the prisoner with the crime of treason.

In the light of the foregoing, the Court of Appeals below misconceived the nature and historic function of the writ of habeas corpus. The sole issue before the court below on habeas corpus was whether the bail fixed in criminal proceedings was excessive. If the bail was excessive, then the constitutional rights of the petitioners were violated, and the court was required to grant appropriate relief. The appropriate relief required under the law was for the court to

fix reasonable bail in the light of the undenied allegations contained in the petitions for writs of habeas corpus. Wholly apart from the rulings of the court in the criminal proceedings, the court on habeas corpus was required to examine into the question of whether or not the petitioners were illegally restrained in violation of their constitutional rights. Whenever a claim that fundamental rights guaranteed by the Constitution have been infringed has been urged before this court, this court has always held that the writ of habeas corpus is the appropriate means for testing the claim. Ex parte Royall, 117 U.S. 241; Frank v. Mangum, 237 U.S. 309; Mooney v. Holohan 294 U.S. 103; Von Moltke v. Gillies, 332 U.S. 708; Hawk v. Olson, 326 U.S. 271; see also, McNab v. United States, 318 U.S. 332.

The decision of the Court of Appeals for the Second Circuit, in United States ex rel Rubinstein v. Mulcahy, 155 Fed. 2d 1002(1946) would appear to be supported by the decisions of this court and the historic precedents which run back into the history of the Common Law in England. The decision of the court below, on the contrary, cites no support in authority, and effectively thwarts the use of the writ of habeas corpus in a type of case which historically gave birth to this famous writ.

Cameraman's Note;

This is poor copy, but is the best obtainable.

II

THE PETITIONERS WERE ENTITLED TO THEIR FREEDOM ON REASONABLE BAIL PENDING TRIAL OF THE CHARGES CONTAINED IN THE INDICTMENT UNDER THE EXPRESS PROVISIONS OF AMENDMENTS V, VI, AND VIII TO THE UNITED STATES CONSTITUTION.

It is well established that bail in criminal cases is intended to combine the administration of justice with the liberty and convenience of the persons accused. The purpose of the allowance of bail is to prevent the punishment of innocent persons as well as to secure the presence of the persons charged with crime at their trial. Bail is never required by way of punishment. The policy of the law is generally to encourage the granting of bail and even after conviction and pending appeal, bail is customarily granted whenever any substantial question of law is presented.

"The statutes of the United States have been framed upon the theory that a person accused of crime shall not, until he has finally been adjudged guilty in the Court of last resort, be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail, not only after arrest and before trial, but after conviction pending a writ of error."

Hudson v. Parker, 156 U.S. 277, 285, 39 L. ed. 424, 427.

The Judiciary Act of 1789, section 33, specifically provided that upon all arrests in criminal cases, bail should be admitted except where the punishment may be death in which case it could be granted in the discretion of the Court. A similar provision was embodied in the Revised Statutes of 1875, section 1015. The Revised Statutes later became sections 596 and 597 of old title 18 of the United States code and then finally was embodied in Rule 46 of the new Federal Rules of Criminal Procedure, 18 U.S.C.

In interpreting the constitutional and statutory provisions of law pertinent to bail, Mr. Justice Butler of the Supreme Court of

the United States sitting as Circuit Court Justice in the Circuit Court of Appeals for the Seventh Circuit in United States v. Motley, 10 F. 2d, 657 (C.C.A. 7, 1926) stated (p. 662):

"It will be observed that the character of the crime charged or probable guilt or innocence is not suggested as having any bearing. The statement shows that trial and conviction according to law should precede punishment. It reflects the purpose of the Federal statutes and the rules of court above stated, that no one should be required to suffer imprisonment for crime before the determination of his case in the court of last resort". See also McKnight v. United States, 113 F. 451 (C.C.A. 6, 1902); Jones v. United States, 12 F. 2d, 708 (C.C.A. 4, 1926).

Bail therefore, in the Federal Courts in non-capital cases is a matter of right before conviction. Its purpose before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." United States ex rel Rubinstein v. Mulcahy, 155 F. 2d 1002, 1004 (C.C.A. 2 Circ. 1946). Bail is an important right essential to the preservation of liberty. From the viewpoint of due process of law, it guarantees to each accused, in the light of the constitutional provisions, that he shall have adequate opportunity to prepare his defense with the assistance of counsel.

Bail which is excessive in the light of the constitutional mandate and the appropriate statutory provisions is in effect a denial of bail in its entirety. Excessive bail can have no other purpose than to make it impossible for the accused to give bail and to detain him in custody. United States v. Lawrence, Fed. Cases No. 15,577 (C.C.D.C. 1835); United States v. Brawner, 7 Fed. 86 (D.C.W.D. Tenn. 1881); Adkins v. Regan, 313 Ky. 695, 233 S.W. (2) 402 (1950); Peo. ex rel Sammons v. Snow, 340 Ill. 464, 173 N.E. 8

(1930); Cooley, Constitutional Limitations (7th ed.), p. 439; Black, Constitutional Law (3rd ed.) p. 704.

In Peo. ex rel Sammone v. Snow, supra, a leading decision, the Court stated:

> "The amount of $50,000 could have no other purpose than to make it impossible for him to give the bail and to detain him in custody and is unreasonable. The constitutional right to be admitted to reasonable bail cannot be disregarded. The judge has no more right to disregard and violate the constitution than the criminal has to violate the law. It is the duty of courts to support and maintain the Constitution, and if the judges, who have taken an oath to support the Constitution openly violate it, how can they expect the courts to retain the confidence and respect of the people? A criminal may have forfeited his right to liberty, but neither courts nor any other power have the right to deprive him of it except in accordance with the law of the land."

In the light of the foregoing, it appears clear that if, as the record establishes, the amounts of bail required of petitioners are excessive, then they have been deprived of their liberty without due process of law and in violation of the express provisions of the Constitution which guarantees them their right to freedom on bail pending the trial of any indictment returned against them.

III

THE PETITIONERS WERE ENTITLED TO THEIR RELEASE ON BAIL IN REASONABLE AMOUNTS PURSUANT TO THE CRITERIA SET FORTH IN RULE 46(c) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

The provisions of Rule 46(c) of the Federal Rules of Criminal Procedure, considered in the light of the constitutional mandate, prescribe the sole factors which a court may consider in fixing bail. The factors prescribed in the Rule are the only factors which the Court may weigh and compare for the purpose of determining what amount will be sufficient -- and no more than sufficient -- to insure the presence of the accused. The amount which "will insure the presence of the defendant" is the sole object of the Rule. In determining that amount, the Court may consider (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against defendant; (3) the financial ability of the defendant to give bail; and (4) the character of the defendant. We consider these factors here seriatim.

1. The nature and circumstances of the offense charged.

So far as the nature and circumstances of the offense charged is concerned, the only source of information is the indictment itself. The petitioners are charged with conspiring to advocate and to organize a society which advocates the forcible overthrow of government. The substantive offenses are set forth in 18 U.S.C. Section 2385. The petitioners are not charged with the commission of the substantive offenses. The offense charged in an unlawful agreement to advocate in the future the proscribed doctrines. The offense is punishable under 18 U.S.C. Section 371, the general conspiracy statute. No non-verbal or physical acts are part of the offense charged in the indictment.

The Smith Act was enacted in 1940. It was the only peacetime sedition act ever enacted in the United States since the Alien and Sedition Acts of 1798. Its validity and wisdom was always in

doubt. See Chafee, Z., Freedom of Speech in the United States (N.Y. 1941). The constitutionality of the statute was not decided until June 4, 1951 by this Court in Dennis v. United States, 341 U.S. 494, 95 L. ed. Adv. 864.

It was conceded in the opinion of this Court that the application of the Statute would always be of serious concern to the Court since the law obviously impinged on freedom of speech, press and assembly protected by the Constitution. Thus, it was stated (P. [illegible]):

> "Where there is doubt as to the intent of the defendants, the nature of their activities, or their power to bring about the evil, this Court will review the convictions with the scrupulous care demanded by our Constitution."

The decision of this Court leaves open, therefore, many important legal and constitutional questions. It has been the subject of many critical comments by the public press and civic and professional organizations. There is every reason for the petitioners to appear and vigorously prosecute their defense against the charges contained in this indictment.

So far as the seriousness of the offense is concerned, it is clear that Congress has not fixed the punishment with unusual severity. The maximum punishment which can be imposed is five years imprisonment and $10,000 fine. 18 U.S.C. Section 371.

Moreover, Congress has spoken directly on the subject of the gravity of the offense. The legislative history is significant. When Congress enacted the new Criminal Code in 1948 it eliminated reference to the conspiracy provisions of the Smith Act. The Reviser's Notes under Section 2385 states:

> "Reference to conspiracy to commit any of the prohibited acts was omitted as covered by the general conspiracy provision, incorporated in Section 371 of this title."

It should be noted, however, that a number of other sections in the new Criminal Code retained their conspiracy provisions. The explanation for this different action by Congress is explained in

the Reviser's Notes under Section 371:

"A number of special conspiracy provisions, relating to specific offenses, which were contained in various sections incorporated in this title were omitted because adequately covered by this section. A few exceptions were made, (1) where the conspiracy would constitute the only offense, or (2) where the punishment provided in this section would not be commensurate with the gravity of the offense" (emphasis added)

Thus, Congress has decided that a maximum penalty of five years and $10,000 fine is commensurate with the gravity of the offense charged herein. It is respectfully submitted that this specific determination cannot be disregarded by the Court. For individual judges to characterize an offense as more serious and deserving of greater punishment than the legislature has ordained is to intrude the judiciary into the legislative field. There is, therefore, nothing in the "nature and circumstances" of the case herein which called for the unusual amounts of bail required of the petitioners herein.

Moreover, of all the cases now pending in the United States District Court for the Southern District of California, Central Division, where bail has been fixed, the cases herein represent by far the highest bail set in that District. In 15[illegible] cases pending in the Southern District where the penalty was five years and more (and where more than one count was involved in many indictments), the average bail fixed was less than $3,000. (See Exhibits "A" and "B" annexed to the petitions for writs of habeas corpus in the Transcripts). In only twelve cases was bail fixed at sums in excess of $10,000 and in only two cases was bail fixed in the sum of $25,000. In one of the latter cases involving mail fraud and conspiracy, the indictment was in five counts with the possible penalty of 25 years imprisonment and $50,000 fine. In the other case involving an indictment of an alien for violation of a provision of the McCarran Act, the penalty fixed by the statute was ten years, and in that case bail originally set at

$25,000, was subsequently fixed at $15,000 under a superseding indictment.

Exhibit "A" annexed to the petitions in the Transcripts demonstrates also that no Court in any part of the country has fixed bail in any Smith Act prosecution subsequent to the Dennis decision in such grossly excessive amounts as has been fixed herein. Despite the pattern of requests by the Government for the fixing of bail at such sums as $100,000, $75,000 and $50,000, the records demonstrate that the bail set by the Courts has varied from sums generally fixed at $5,000 and $10,000 and, in some cases, at $20,000. It should be noted again, in this connection, that Judge Mathes stated in the proceedings before him "that $5,000 would assure the presence of any of these defendants insofar as their will to come is concerned" (Transcript of proceedings on habeas corpus, p. 126).

Moreover, even if a Court, in plain disregard of the legislative determination, should characterize an offense as most heinous in its own estimation, still this would not authorize the denial of bail or the fixing of excessive bail. In United States v. Motlow, 10 F. 2d 657 (C.C.A. 7, 1926), Mr. Justice Butler, of the Supreme Court sitting as Circuit Justice in the Circuit Court of Appeals, stated:

> "The Eighth Amendment provides that 'excessive bail shall not be required'. This implies and therefore safeguards, the right to give bail at least before trial. The purpose is to prevent the practical denial of bail by fixing the amount so unreasonably high that it cannot be given. The provision forbidding excessive bail would be futile if magistrates were left free to deny bail. . . Abhorrence, however great, of persistent and menacing crime will not excuse transgression in the courts of the legal rights of the worst offenders. The granting or withholding of bail is not a matter of mere grace or favor" (pp. 659, 662).

2. The weight of the evidence.

The record is barren of any evidence against the petition

ers. Probably this factor is significant only in capital cases. Compare, Rule 46(a)(1) of the Federal Rules of Criminal Procedure. Only the indictment appears in the record herein, and an indictment is never evidence.

> "An indictment charges the defendant with action or failure to act contrary to the law's command. It does not constitute proof of the commission of the offense."
>
> Tot v. United States, 319 U.S. 463, 466, 87 L. ed. 1519, 1523

It was suggested by Judge Mathes during the arguments before him that the evidence before the grand jury which recommended bail of $75,000 and $100,000 might be considered as a factor in determining the weight of evidence. There is no authority in law for a grand jury to recommend bail. Bail is required to be set by the Court upon evidence adduced before it. The evidence, if any, presented to the grand jury by the prosecutor was legally unknown to the District Court. That evidence was untested by cross-examination or contrary proof. Its competency, relevancy or materiality was not passed upon. If the view of the District Court were sustained, the question of bail in every case would pass from the hands of the Courts into the hands of prosecutors and grand juries.

3. The financial ability to give bail.

The financial ability of the petitioners to pay anything but nominal bail is undisputed. Although the average income of all the petitioners is only about $50 per week and their other assets are almost nil, bail has been set in the sum of $600,000. When it is considered that the average bail in the Southern District of California is less than $3,000, it cannot be denied that an increase over such average of 1600% without reason is grossly excessive. While bail need not necessarily be fixed at the precise amount an defendant can afford to furnish, it can hardly be denied that to fix bail in amounts which are entirely prohibitory is to simply disregard the defendant's financial ability, and lends support to the view that bail has been fixed

solely for the purpose of detention.

A number of decisions make this perfectly plain. One of the most recent is United States ex. rel. Rubinstein v. Mulcahy, 153 F. 2d 1002 (C.C.A., 2 Circ., 1946). The defendant, charged with conspiracy to evade the draft, was a resident of New York but a naturalized citizen of Portugal, a country from which he could not have been extradited had he fled there. His bail was originally set at $20,000 but the government, on a showing that he had made trips out of the jurisdiction without notice to the District Attorney's office, that he had converted some of his assets into cash, and that he had transferred some of his assets out of the country, applied to have it rafsed to $1,000,000. The District Court cut the government's figure in half and reset bail at $500,000. Apparently the defendant was very wealthy, for it was "not claimed that he cannot furnish bail in the amount of $500,000, but only that it will require financial arrangements unreasonably burdensome." (p. 1004). On habeas corpus, the Circuit Court of Appeals held the figure excessive.

The Rubinstein case expresses in a very condensed form the governing principles to be borne in mind: (1) that the reason for bail is "the need for a tie to the jurisdiction"; (2) that in considering the strength of the tie to be created by bail, the manifold ties to the jurisdiction which the defendant already has are to be borne in mind: his home, his family, his health, his relatives, etc.; (3) that "the past record and recent action of the accused" are to be considered, but are to be considered only "as bearing upon his good faith in appearing for trial"; (4) that the need for a tie to the jurisdiction is not to be considered as the sole question involved, nor even as the primary and over-riding consideration, but is to be fairly balanced against the equally important "right to freedom from unnecessary restraint before conviction"; (5) that there is no presumption that the defendant intends to flee, nor can any such intention be inferred merely from the ability to do so.

In United States v. Lawrence, Fed. Cas. No. 15,577, (CC,

D.C., 1835), the defendant had attempted to assassinate the President of the United States (Andrew Jackson). His attempt failed only because his gun failed to fire.

> "After inquiring as to his property and circumstances, the chief Judge said to Mr. Key, the district attorney, that he supposed bail in $1,000 would be sufficient, as it was not a penitentiary offense, there being no actual battery, and as he did not appear to have any property. Mr. Key seemed, at first, to acquiesce, but having conversed with some of the president's friends who stood around him, he suggested the idea that it was not impossible that others might be concerned who might be disposed to bail him, and let him escape to make another attempt on the life of the president, and therefore thought that a larger sum should be named. The chief judge then said that there was no evidence before him to induce a suspicion that any person was concerned in the act; that the Constitution forbade him to require excessive bail and that to require larger bail than the prisoner could give would be to require excessive bail, and to deny bail in a case clearly bailable by law." (p. 888)

In United States v. Brawner, 7 F. 86 (D.C., W.D. Tenn., 1881), bail had been set at $5,000 for a defendant charged with counterfeiting. The defendant was poor and unable to meet this amount. Citing and following the rule of the Lawrence case that "to require larger bail than the prisoner could give would be to require excess bail," the court held this amount to be excessive and in violation of the Eighth Amendment.

See also, Barrett v. United States, 4 F. 2d, 317, 319 (C.C.A. 6, 1925); Flores and Eades v. United States, (C.C.A. 7, March 17, 1930, unreported), quoted in 5 Notre Dame Law 419 (April--May, 1930).

4. The character of the petitioners.

As to this aspect of the case, the allegations set forth

in the petitions for writs of habeas corpus remain undenied. The petitioners have lived in most of the cases all of their mature lives in California. They have families, wives, husbands, children and relatives. Some have held public office; others have been candidates for office and polled large electoral votes. A number of the petitioners are honorably discharged veterans of World War I and II. Six of them have never been arrested for any offense. The others were in almost all cases ultimately exonerated of the offenses for which they were convicted. In all these cases, they were released on nominal bail or on their own recognizance, and always attended all required proceedings with final exoneration of bail. Knowledge that arrests were pending in the case herein only found the petitioners ready and determined to meet the charges against them.

IV

RULE 46(c) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE AS CONSTRUED AND APPLIED BY THE COURT BELOW IS UNCONSTITUTIONAL AND DEPRIVES THE PETITIONERS OF THEIR LIBERTIES AS GUARANTEED BY THE FIRST, FIFTH, SIXTH AND EIGHTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CONSTITUTES A BILL OF ATTAINDER IN VIOLATION OF ARTICLE I, SECTION 9, CLAUSE 3 OF THE CONSTITUTION.

The reasoning of the Court below largely based on the views of District Judge Mathes, appears to reflect the opinion that the amounts of bail required of these petitioners was necessary in order to detain the petitioners, not to insure their presence or to grant them their liberty pending the trial of the charges made against them. Judge Mathes, for example, stated (tr. in habeas corpus proceedings, p.104):

> "As I understand the rule, Mr. Marshall, in fixing bail the court always has in mind the presumption of innocence, but considers as one of the factors that the defendants may be guilty of the charge."

The rule is explicitly to the contrary. Thus, in United States v. Motlow, 10 F. 2d 657 (C.C.A. 7, 1926), Justice Butler stressed "that the character of the crime charged or probable guilt or innocence is not suggested as having any bearing."

In D'Aquino v. United States, 180 F.2d 271 (C.C.A.9, 1950), Justice Douglas, sitting as Circuit Justice, stated (p. 272):

> "The question of the guilt or innocence of an appellant is not an issue on an application for bail."

The opinion of the Court below adopts the position of the District Court that the petitioners must be assumed (along with all other persons charged with being members or leaders of the Communist Party) to be hostages held in protective custody because other persons in another jurisdiction failed to comply with the obligations of their

bail. To use the bail process for such end results is to pervert a constitutional right into a weapon of oppression.

If the matter rested upon analogy alone, it should be noted that in the Dennis case, seven of the defendants did appear and surrender. Further, in the Dennis case bail was fixed at $5,000 after indictment and until conviction; thereafter the sum was increased to $20,000. The petitioners here have only recently been indicted; they are presumptively innocent of the charges made against them, and it is undisputed that they are prepared to appear and vigorously defend themselves.

But the matter does not rest upon analogy alone. The Court below was in effect saying that the petitioners here and the four persons in New York were in effect all members of one conspiracy and that the object of the conspiracy was to abscond. There is not a single bit of evidence in the record to support such an unwarranted holding. The only matter in the record is an indictment, and an indictment, as we have heretofore noted, proves nothing. Can a conspiracy to abscond be implied? This Court has pointedly answered that question in the negative. Krulewitch v. United States, 336 U.S. 440. Justice Jackson in his concurring opinion sharply emphasized the vice of "implied conspiracies" (p. 436):

> "It is difficult to see any logical limit to the 'implied conspiracy', either as to duration or means, nor does it appear that one could overcome the implication by express and credible evidence that no such understanding existed, nor any way in which an accused against whom the presumption is once raised can terminate the imputed agency of his associates to incriminate him. Conspirators, long after the contemplated offense is complete, after perhaps they have fallen out and become enemies, may still incriminate each other by deliberately harmful, but unsworn declarations, or unintentionally by casual conversations

out of court. On the theory that the law will impute to the confederates a continuing conspiracy to defeat justice, one conceivably could be bound by another's unauthorized and unknown commission of perjury, bribery of a juror or witness, or even putting an incorrigible witness with damaging information out of the way."

District Judge Mathes made reference to the rule that bail is generally denied on capital cases because experience has shown that persons facing death have a temptation to run away. But this generalized experience of mankind founded on a law of nature is hardly a reason for concluding that persons charged with being members of the Communist Party are to be imprisoned because of an occurrence which took place in another jurisdiction 3,000 miles away. As a matter of fact, in a second Smith Act prosecution in the Southern District of New York, Judge Sylvester Ryan, a Judge of that court, on a motion to increase bail (See Exhibit A annexed to petitions in Transcripts) stated:

"I cannot in justice to these defendants charge them with the non-appearance of four other defendants . . . This Court cannot charge these defendants with being confederates or in any way having conspired or being in alliance with those not here" (Tr. in bail proceedings, p. 83).

The cogency of Judge Ryan's observations are exemplified by the injury which has been done to the petitioners here. The principle argument of the government below, both in the District Court and in the Court of Appeals, was that bail in the sum of $50,000 should be imposed because four persons had failed to appear in the Southern District of New York, after their judgments of conviction were affirmed by this Court. The government argued that the four persons, named in this indictment as co-conspirators, but not defendants, had been the subject of an "unsuccessful national survey by the Federal Bureau of Investigation, that it was "reasonable to believe" that a

"national conspiracy" exists, that somewhere there are "persons presently unindicted who would readily harbor fugitives", willing to provide "concealment of defendants" who are "unlike the usual fleeing criminal who must pay dearly for his hide-outs." It was largely upon this argument that the courts below found that this exceedingly high bail of $50,000 was not excessive.

The record, however, is absolutely devoid of any evidence of any connection between the petitioners here and the defendants in the Southern District of New York. There was not an iota of evidence to indicate in any way that the petitioners would not honor the obligations of their bond. Further, the petitioners here, on the record, are 12 men and women presumptively innocent of any charges contained in the indictment which has just recently been returned against them. Yet the government was permitted to build up a conjectural conspiracy which the petitioners could not possibly combat. The petitioners swore as to their financial abilities and their characters and willingness to defend and demonstrated the strong ties which they had to the jurisdiction. Nothing that they alleged was denied. Yet, if the viewpoint of the court below is sustained, petitioners are to be confined prior to trial on grossly excessive bail because law enforcement agencies have not apprehended four persons who forfeited their bail in New York after affirmance of their conviction, and because some "national conspiracy" to harbor and conceal petitioners has been inferred by prosecuting officials.

If the amount of bail for a defendant in a criminal case is to be determined by such factors, then the constitutional right to bail and Rule 46(c) are wastepaper, and the judiciary, so far as bail is concerned, will become merely an arm of the Executive Department, dependent upon the whims and vagaries of prosecuting officials.

If the government's views are correct, and if the sole factor before any court, regardless of what appears in the record, is the question of the four persons who failed to appear in New York, then

the government has the burden, it is respectfully submitted, to explain why the district courts of New York (Ryan, J.), Philadelphia (Kirkpatrick, J.), Baltimore (Chesnut, J.), and Hawaii (Metzger, J.), in subsequent Smith Act prosecutions, fixed bail in sums of $5,000 and $10,000, and in some cases, ~~at~~ $20,000. The government in all these cases argued for bail in $100,000 and $75,000, and the same arguments of an implied conspiracy to forfeit bail were advanced. Nevertheless, bail was fixed by the various district courts at far lower figures. The government, it is respectfully submitted, can make no explanation other than the fact that some judges of the courts of the United States refused to abandon their constitutional functions and applied the law of the land dispassionately.

It is fundamental in American law that guilt is individual. It is abhorrent to the rudiments of our justice to judge a man or attaint him because of his family, his creed, or his associations only. That basic principle in American law, fundamental to the democratic process, has been emphasized on many occasions. Bridges v. United States, 184 F.2d 881 (C.C.A.9,1950); Williamson v. United States, 95 L.ed. Adv. 10; Schneiderman v. United States, 320 U.S. 118; Bridges v. Wixon, 326 U.S. 135; DeJonge v. Oregon, 299 U.S. 353; Herndon v. Lowry, 301 U.S. 242; Baumgartner v. United States, 322 U.S. 665. When it is considered that a primary purpose of the historic Habeas Corpus Act was to insure that habeas corpus would reach to and liberate persons held in jail upon "suspicions which could not be sustained by evidence" (Ex Parte Watkins, 3 Peters 193, 202), it appears clear that the substitution of guilt by association for proof of personal wrongdoing converts the "Writ of Freedom" into ordinary process.

Further, it was stated by the District Court that it could not overlook what the Congress of the United States has said about "the Communist conspiracy" (tr. in bail proceedings, p.126). This was undoubtedly a reference to the findings contained in Section 2 of the

Internal Security Act of 1950, commonly known as the McCarran Act.

But the District Court below was not involved in the trial of a McCarran Act violation, nor was it passing upon the constitutionality of that measure. Nor was the Court passing upon the exercise of discretion by another arm of government as in Carlson v. Landon, 187 F. 2d 991 (C.C.A.9, 1950). The petitions for writs of habeas corpus herein were directed to the judiciary who were required to exercise a legal discretion upon "facts" and "evidence" adduced in Court in order to render justice, 28 U.S.C. Section 2243. A "hearing" was required upon evidence; not reliance upon "legislative findings" in another statute whose only purpose, if any, is to cast light upon the legal meaning of that statute.

The "law of the land" requires in absolute minimum "a law which hears before it condemns." Powell v. Alabama, 287 U.S. 45, 68. Indeed, that the Constitution commands at least this much "needs nothing but statement." Riberside and Dan River Cotton Mills, Inc. v. Menefee, 237 U.S. 189, 193. As stated in Powell v. Alabama, supra, at p. 68, "It never has been doubted by this Court, or any other so far as we know", that "hearing" is a prerequisite to due process. It is so because it is required by the "inimitable principles of justice which inhere in the very idea of free government and which no member of this union may destroy." Holden v. Hardy, 169 U.S. 366, 369.

But of what avail is a "hearing" if guilt has been predetermined? If, in a proceeding in habeas corpus, the petitioners are deemed conspirators before they have been tried, if judicial notice may be taken of their guilt without any proof produced, and merely on the basis of the "findings" another arm of government, of what avail is habeas corpus or the due process clause of the Fifth Amendment to the United States Constitution?

If Rule 46(c) of the Federal Rules of Criminal Procedure relative to the amounts of bail were to be read as the Court below would read it, the enactment would become an attainder and a nullity in law.

McFarland v. American Sugar Refining Co., 241 U.S. 79, 86-87. "Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty or property." Manley v. Georgia, 279 U.S. 1, 6. See also, Morrison v. California, 291 U.S. 82; Western and Atlantic Railway Co. v. Henderson, 279 U.S. 639; Tot v. United States, 319 U.S. 463.

Legislatures enact laws, courts and courts alone try the alleged violators. Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226; Opp Cotton Mills v. Adminstrator, 312 U.S. 126, 145. It mistakes the respective functions of the two branches of government to assume that a matter "found" by one may properly be given consequences within the processes and for the purposes of the other. The character of the hearing which precedes a finding "must be adapted to the consequences that are to follow." Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294, 319.

It was not within the power of Congress to imprison these petitioners by legislative edict; yet the Court below has done that very thing upon the basis of a legislative "edict." In so doing, it has overlooked the fact that it is not within the competence of the judiciary to find persons guilty of wrongdoing upon the basis of "legislative findings." It overlooked the fact that the plain duty of the judiciary pursuant to constitutional mandate is to find its own "facts" upon proof fairly established by the prosecution.

CONCLUSION

There has been very little attempt by the Government in this case to disguise the purpose of its request for excessive bail. The pattern which is unfolding throughout the country evidences a deliberate attempt by the executive arm of government to arrest and imprison alleged members of the Communist Party and keep them in jail until they are tried and convicted. The petitioners here are admittedly poor persons and they are in no position to raise $50,000 as bail. This cannot be denied by the Government. A fair

trial is impossible under such circumstance. It is respectfully submitted that unless the federal courts afford the rudiments of due process to defendants accused of crime, the American premise of equal treatment before the law will have been completely undermined and the protection of all Americans in their fundamental liberties will be seriously endangered.

WHEREFORE petitioners pray that the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit be granted.

Respectfully submitted,
Margolis and McTernan,
By Ben Margolis
Counsel for Petitioners

Ben Margolis
and
Daniel G. Marshall,
Counsel for
Petitioner Connally

Sam Rosenwein,
Of Counsel

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 400

Office-Supreme Court, U. S.
FILED
OCT 25 1951
CHARLES ELMORE CROPLEY
CLERK

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA,

Petitioners

v.

JAMES J. BOYLE, UNITED STATES MARSHAL,

Respondent

MOTION TO DISPENSE WITH PRINTING OF TRANSCRIPT OF RECORDS ON APPEAL, PETITION FOR WRIT OF CERTIORARI AND BRIEFS, AND, IN THE EVENT CERTIORARI IS GRANTED, SUBMITTING THE CAUSE ON BRIEFS AND ARGUMENTS OF COUNSEL BEFORE THE COURT.

COME NOW THE PETITIONERS above named and their attorneys, Ben Margolis, Esquire, A.L. Wirin, Esquire, and Daniel G. Marshall, Esquire, and respectfully move this Court for an order dispensing with the printing of the Transcripts of the Records on Appeal in the Court of Appeals for the Ninth Circuit, the Petition for Writ of Certiorari to the Court of Appeals for the Ninth Circuit and the briefs of the petitioners submitted to this Court, and permitting the filing of mimeographed or typewritten copies of the aforesaid papers, and, in the event certiorari is granted in the above entitled proceeding, submitting the cause on the briefs and arguments of counsel already presented to this Court.

This motion is made upon the grounds that the cause herein has already been fully briefed and argued before this Court by counsel for the respe tive petitioners, and that an order dispensing with the printing of the aforesaid transcripts, briefs and petitions will enable the matters herein to be determined expeditiously and without large financial burdens to the petitioners.

DATED: October 23, 1951.

Respectfully submitted,

BEN MARGOLIS

A. L. WIRIN

DANIEL G. MARSHALL

Attorneys for Petitioners

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In the Supreme Court of the United States

OCTOBER TERM, 1951

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE AND ALBERT JASON LIMA, PETITIONERS

v.

JAMES J. BOYLE, UNITED STATES MARSHAL, RESPONDENT

ON PETITION FOR BAIL PENDING APPLICATION FOR A WRIT OF CERTIORARI

BRIEF FOR THE RESPONDENT IN OPPOSITION AND SUPPLEMENTAL MEMORANDUM FOR RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1951

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE AND ALBERT JASON LIMA, PETITIONERS

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JAMES J. BOYLE, UNITED STATES MARSHAL, RESPONDENT

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals are not yet reported.

QUESTIONS PRESENTED

1. The District Court did not issue writs of habeas corpus on the petitions therefor, but issued

orders to show cause, and after a hearing thereon, it denied the petitions and discharged the orders to show cause, and its action was affirmed by the Court of Appeals. The question on this phase of the case is whether this Court or a Justice of the Court has power under Rule 45 of the Rules of the Court to grant bail pending review of the District Court's decision.

2. Whether habeas corpus will lie to challenge as excessive bail fixed on the return of an indictment, or whether the defendant's sole remedy is to apply to the district court for a reduction of bail.

3. Whether the courts below in this habeas corpus proceeding erred in concluding that the bail fixed on the indictment was not excessive.

RULES INVOLVED

Rule 45, Revised Rules of the Supreme Court of the United States:

> 1. Pending review of a decision refusing a writ of habeas corpus, the custody of the prisoner shall not be disturbed.
>
> 2. Pending review of a decision discharging a writ of habeas corpus after it has been issued, the prisoner may be remanded to the custody from which he was taken by the writ, or detained in other appropriate custody, or enlarged upon recognizance with surety, as to the court or judge rendering the decision may appear fitting in the circumstances of the particular case.
>
> 3. Pending review of a decision discharging a

prisoner on habeas corpus, he shall be enlarged upon recognizance, with surety, for his appearance to answer and abide by the judgment in the appellate proceeding; and if in the opinion of the court or judge rendering the decision surety ought not to be required the personal recognizance of the prisoner shall suffice.

4. The initial order respecting the custody or enlargement of the prisoner pending review, as also any recognizance taken, shall be deemed to cover not only the review in the intermediate appellate court but also the further possible review in this court; and only where special reasons therefor are shown to this court will it disturb that order, or make any independent order in that regard.

Rule 46, Federal Rules of Criminal Procedure:

(a) RIGHT TO BAIL.

(1) *Before Conviction.* A person arrested for an offense not punishable by death shall be admitted to bail. A person arrested for an offense punishable by death may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.

* * * * *

(c) AMOUNT. If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commissioner or court or

judge or justice will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant.

STATEMENT

Petitioners were arrested on July 26, 1951, under warrants issued by a United States Commissioner in the Southern District of California on complaints charging them with conspiracy to commit offenses prohibited by the Smith Act, 54 Stat. 670, 671, 18 U.S.C., Supp. IV, 371, 2385. Four of the petitioners were arrested in Los Angeles (Healey, Connelly, Kusnitz, Steinberg), seven in San Francisco (Lima, Yates, Lambert, Richmond, Fox, Stack, Doyle), and one in New York (Schneiderman). A United States Commissioner in Los Angeles fixed bail for those arrested there at $75,000 each pending preliminary examination. A United States Commissioner in San Francisco fixed bail for four of those arrested there at $75,000 each and for the other three at $7,500 (Yates), $2,500 (Doyle), and $2,500 (Stack). A United States Commissioner in New York fixed bail for Schneiderman at $100,000 pending removal proceedings. (Pet. 1-4.)

On July 27, 1951, Judge Louis E. Goodman, of the District Court for the Northern District of California, on a motion by the Government for an increase of the bail of Yates, Doyle and Stack and

motions by Lima, Lambert, Richmond and Fox for a reduction of bail, fixed bail for each of them at $50,000 pending their removal to the Southern District of California. The next day Judge Goodman denied their petitions for writs of habeas corpus. (Pet. 3-4.)

On July 31, 1951, a grand jury in the Southern District of California returned an indictment charging the applicants with conspiracy to commit offenses prohibited by the Smith Act, 54 Stat. 670, 671, 18 U.S.C., Supp. IV, 371, 2385. The grand jury recommended that bail be fixed at $75,000 for each of the applicants except Schneiderman and that his bail be fixed at $100,000. (Pet. 4-5.) Later that day Judge James M. Carter of the District Court for the Southern District of California, after denying an oral motion that he disqualify himself for personal bias and prejudice, fixed bail at $75,000 for each of the four petitioners arrested in Los Angeles (Pet. 4-5).

On August 1, 1951, the seven petitioners arrested in San Francisco were removed to Los Angeles (Pet. 5). On August 6, all of the petitioners except Schneiderman, who was still in New York, moved in the District Court for the Southern District of California to fix bail in, or reduce bail to, a reasonable amount. The motions came before Judge Carter, and petitioners filed an affidavit of personal bias and prejudice requesting Judge Carter to disqualify himself. On August 7 Judge Carter held

the affidavit legally insufficient and, upon request, withheld a ruling on petitioner Connelly's bail motion pending appellate review of the ruling that the affidavit of bias was insufficient. On August 8 Judge Carter fixed bail for the other petitioners at $50,000 each, except Yates and Stack, as to whom bail was fixed at $25,000. (Pet. 5-6.)

On August 7, 1951, Judge Edward J. Dimock, of the District Court for the Southern District of New York, reduced Schneiderman's bail to $50,000 (Pet. 4). On August 14, 1951, he was removed to Los Angeles, arriving on August 17 (Pet. 6).

On August 24, 1951, the Court of Appeals for the Ninth Circuit held that the above-mentioned affidavit of personal bias and prejudice was legally sufficient. *Connelly* v. *The United States District Court*, etc., No. 13,053. Accordingly, on August 29, 1951, Judge Carter disqualified himself. (Pet. 7-8.) [1]

After a hearing on motions by all the petitioners to fix or reduce bail, Judge Mathes on August 30 fixed bail for each of them at $50,000 (Pet. 8).

On September 12, 1951, Judge Harrison, of the District Court for the Southern District of Cali-

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[1] Meanwhile, on August 17, District Judge Mathes dismissed petitions for habeas corpus on behalf of all the petitioners except Connelly and Schneiderman in which it was claimed that the amounts of bail previously fixed by Judge Carter were excessive. On August 27, after the Court of Appeals' decision disqualifying Judge Carter, the petitioners in that habeas corpus proceeding dismissed their appeals from Judge Mathes' orders. (Pet. 6-8.)

fornia, after a hearing on an order to show cause, denied petitions for writs of habeas corpus in which petitioners claimed that their detention was illegal because the bail fixed was so excessive as to constitute a denial of bail (Pet. 8-9). Judge Harrison concluded that the bail fixed was neither "arbitrary or the result of an abuse of discretion" and found that "such amounts as were fixed are necessary to assure the presence of the petitioners in the further proceedings in the criminal case and for no other purposes." (Memorandum Opinion, p. 5).

On appeal, the Court of Appeals for the Ninth Circuit on October 3 affirmed Judge Harrison's order. It held that habeas corpus is not a proper remedy for a person held in default of allegedly excessive bail (C.A. opinion, pp. 2-3). The court further stated, however, that, even if it considered habeas corpus a proper remedy, it would affirm the order because it could not say that Judge Harrison erred in holding that the bail fixed was necessary to assure the presence of petitioners in the further proceedings in the criminal case (C.A. opinion, pp. 3-4). Judge Healy, dissenting, thought that habeas corpus is available to one detained in custody who claims the bail fixed is excessive and that petitioners' claim should be considered "unfettered by the holding of the majority" that habeas corpus was not a proper remedy.

Petitioners state (Pet. 15) that they "intend to immediately file an application for writ of certio-

rari with the United States Supreme Court from the determination of the Court of Appeals for the Ninth Circuit affirming the order of the District Court denying the petitions for writs of habeas corpus."

The matter is presently before this Court on petitioners' application for bail submitted to Mr. Justice Douglas,[2] and referred by him to the entire Court.

ARGUMENT

I

The Question of the Power of This Court or a Justice Under This Court's Rule 45 to Grant Bail Pending Review of a Habeas Corpus Proceeding

On March 29, 1886, this Court promulgated its then Rule 34, which, as amended on May 10, 1886, read (117 U.S. 708):

> CUSTODY OF PRISONERS ON HABEAS CORPUS
>
> 1. Pending an appeal from the final decision of any court or judge declining to grant the writ of *habeas corpus*, the custody of the prisoner shall not be disturbed.
>
> 2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or

[2] An application for habeas corpus was also submitted to Mr. Justice Douglas, but we are advised that this application has not been referred to this Court.

judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

This rule was continued unchanged (see 210 U.S. 499; 222 U.S., p. 37 of rules printed at end of volume) until July 1, 1925, when it was revised to its present form (Rule 42, 266 U.S. 685; now Rule 45, 275 U.S. 629, *supra*, p. 2).

(a) This case comes within the literal language of paragraph 1 of the rule, since no writ of habeas corpus issued, but only an order to show cause, and, after a hearing on the petition and order, the petition was denied. At no time in the proceeding was any order made respecting production or the custody of petitioners. Paragraph 1 provides that "Pending review of a decision refusing a writ of habeas corpus, the custody of the prisoner shall not be disturbed." This provision is not materially different from paragraph 1 of the old Rule 34, *supra*.

Paragraph 1 may be read not only as a limitation on the lower courts and judges,[3] but also as

[3] In *In re Murphy*, 87 Fed. 549 (C.C.D. Mass.), a writ of habeas corpus was denied to one in prison under sentence of a state court, application for the writ having been based upon

a limitation on this Court. The provision of paragraph 4 that the Supreme Court will not disturb an order of the district court respecting custody or enlargement pending review except upon a showing of "special reasons" does not seem to relate to orders under paragraph 1. For that provision of paragraph 4 presupposes an "initial order respecting the custody or enlargement." The quoted phrase would appear to refer back to the situations covered by paragraphs 2 and 3, which relate specifically to orders as to custody or enlargement, and not to the decision on the application for the writ. Under paragraph 1, the District Court, when refusing to issue the writ, is not authorized to enter any order as to custody but must leave the custody undisturbed.

Since, however, the petitions in this case were denied after a hearing on the petitions and orders to show cause, the case may be deemed to come within the intendment of paragraph 2. See 28 U.S.C., Supp. IV, 2243, which provides that a "court, justice or judge entertaining an application

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the alleged unconstitutionality of the statute under which he had been sentenced. The court had grave doubts as to the constitutionality of that statute, and, for that reason, thought that the petitioner ought to be given an opportunity to apply for bail pending appeal. But it apparently did not believe that it possessed power to allow bail where the writ had not issued. To enable him to do so under Rule 34, the court stated that, "on its return, we will order the discharge of the writ, and thereupon consider any application that may be made for admitting to bail, pending an appeal, if one is taken" (87 Fed. at 553).

for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted * * *." The provision for an order to show cause, a procedure approved in *Walker* v. *Johnston*, 312 U.S. 275, 284, serves the same purpose as a writ in calling upon the respondent to justify his detention of the petitioner and in bringing the matter on for hearing in situations where production of the petitioner is unnecessary in the determination of the issues. This procedure is similar to the situation contemplated by paragraph 2 of discharge of a writ and denial of the petition after a hearing. For this reason we shall consider the question whether, assuming the matter to fall within paragraph 2, a single Justice, or only the Court, has power to grant bail pending appeal from an order discharging a writ of habeas corpus after it has been issued.

(b) On July 1, 1925, a very material change was made in paragraph 2. To the provision respecting custody or enlargement pending review of a decision discharging a writ of habeas corpus after it has been issued, there was added the phrase, "as to the court or judge rendering the decision may appear fitting in the circumstances of the particular case." At the same time paragraph 4 was added, which provides that only "this court" will disturb an order of the district court respecting cus-

tody or enlargement pending review upon a showing of special reasons.

It seems clear that by this change in the rule the Court intended to vest power only in the court or judge who rendered the decision to disturb the custody of the prisoner pending review, with the exception that *this Court* can do so "only where special reasons therefor are shown." We do not know why the Court made this change in its rule, but it may have thought that the court or judge who heard the habeas corpus proceedings is in a better position to render a decision with respect to custody of the prisoner pending review than a court of appeals or a single Justice or circuit judge.

In every case in which the rule has been interpreted, it has been given its literal meaning. Thus, the Second Circuit in *United States ex rel. Thomas* v. *Day*, 29 F. 2d 485, held that a circuit judge does not have the power to grant bail to a prisoner pending review of an order discharging a writ of habeas corpus. It said (p. 487):

> * * * By paragraph 42 [now 45] of the Revised Rules of the United States Supreme Court, July 1, 1925 (266 U.S. 685), and rule 30 of this court, adopted October 17, 1925, the custody of a prisoner who has sued out a writ of habeas corpus which has not been sustained may not be disturbed, nor may he be enlarged upon a recognizance assuring his appearance, unless such release be granted by the court

> or judge rendering the decision and who makes the order. A judge of the Circuit Court of Appeals is not granted the authority under the rules, either of the Supreme Court or of this court, to grant bail to an alien pending appeal where his writ of habeas corpus has been discharged.

In *York ex rel. Davidescu* v. *Nicolls*, 159 F. 2d 147, the First Circuit held that a court of appeals has no such power (p. 148):

> It will be noted that by this rule [Rule 45, paragraph 2] discretion to admit to bail pending appeal is vested in "the court or judge rendering the decision" discharging the writ. Neither the circuit court of appeals nor a judge thereof is given independent authority to admit to bail.

See also *United States ex rel. Paetau* v. *Watkins*, 164 F. 2d 457, 460 (C.A. 2); *Klopp* v. *Overlade*, 66 F. Supp. 450, 456 (S.D. Ind.).

In *Matter of Application of Pirinsky for Bail Pending Appeal*, Mr. Justice Jackson held that he had no power, either as a Justice of the Supreme Court or as Circuit Justice, to grant bail pending appeal from an order discharging a writ of habeas corpus after a writ had been issued. 70 S. Ct. 232. Circuit Judge Charles E. Clark had previously held, in the same case, that he had no power to grant bail. Their rulings denying bail were based on the *Davidescu* and *Thomas* cases, *supra*.

On the other hand, in *Carlson et al.* v. *Landon, District Director,* 341 U.S. 918, No. 35 this Term, the Court granted bail pending certiorari proceedings on an application made to Mr. Justice Douglas.

These decisions taken together hold that only the District Court rendering the decision and this Court as a Court have power to grant bail pending appeal from an order discharging the writ of habeas corpus after it has been issued. We think that this is the correct construction of Rule 45.

II

The Question of the Propriety of Habeas Corpus as a Remedy for Attacking Allegedly Excessive Bail

Our analysis of this question convinces us that habeas corpus is a proper mode of attacking bail alleged to be excessive. The Eighth Amendment's proscription against excessive bail is designed to prevent the practical denial of bail by setting it prohibitively high. *United States* v. *Motlow,* 10 F. 2d 657 (C.A. 7, Butler, J.); cf. *United States* v. *Lawrence,* C. C. D.C. 1835, Fed. Cas. No. 15,577. Habeas corpus was used very early to determine the right to bail. *United States* v. *Hamilton,* 3 Dall. 17. The power to assure bail by habeas corpus is the same whether there has been an outright denial or a setting of an excessive sum. Petersdorff, *A Practical Treatise on the Law of Bail in Civil and Criminal Proceedings* (1835), pp. 512-513. Since no appeal lies from an interlocutory order

fixing or denying a motion for reduction of bail (cf. *Cobbledick* v. *United States*, 309 U.S. 323; *Berman* v. *United States*, 302 U.S. 211; *Browder* v. *United States*, 168 F. 2d 418 (C.A. 5)),[4] the accused would be without remedy to vindicate a constitutional right if he were barred from habeas corpus.

The Court of Appeals for the Second Circuit has explicitly held, contrary to the holding of the Ninth Circuit in this case, that a petition for habeas corpus in a district court is a proper way to challenge bail as excessive. *United States ex rel. Rubinstein* v. *Mulcahy*, 155 F. 2d 1002. There, the petitioner was indicted for knowingly making false statements to his local draft board regarding his non-liability for service under the Selective Training and Service Act of 1940. He pleaded not guilty and was released on bail which he furnished in the amount of $20,000. Thereafter, on the government's motion to increase the bail to $1,000,000 on the basis of information it had received indicating a purpose to flee the jurisdiction, the district court raised the bail to $500,000. After the denial of his motion before another judge for a reduction of bail, petitioner surrendered to the United States marshal and filed a petition for a writ of habeas

[4] This has been the holding in states having comparable statutes restricting the right of appeal to final decisions. *People ex rel. Shapiro* v. *Keeper of City Prison*, 290 N. Y. 393, 49 N. E. 2d 498; *Wells* v. *Commonwealth*, 299 Ky. 51, 184 S. W. 2d 223; *Ex parte Bice*, 105 Tex. Cr. 484, 289 S.W. 43.

corpus challenging the validity of his restraint on the ground that the bail was excessive.

The Second Circuit concluded that the remedy of habeas corpus was proper. It also concluded that the bail set was excessive, reversed the District Court's order denying the writ, and remanded the case with directions to grant the writ and fix reasonable bail to insure the relator's appearance in the criminal proceeding, indicating that if no further facts were shown the bail need not be in excess of $50,000. The Second Circuit later followed this holding in *United States ex rel. Turiano* v. *Mulcahy*, 177 F. 2d 1021.

There are few other federal cases on this point.[5] In *Johnson* v. *Hoy*, 227 U.S. 245, and *United States ex rel. Miller* v. *Reing*, 81 F. Supp. 367 (E. D. Pa.), it seems to have been assumed that habeas corpus would be a proper remedy. But there is substantial state court authority that habeas corpus is a proper way to attack excessive bail. The statutory differences in the states are unimportant; reliance is placed by the state courts on common constitutional provisions against requiring excessive bail. See *People ex rel. Sammons* v. *Snow*, 340 Ill. 464, 173 N. E. 8; *People ex rel. Deliz* v. *Warden*, 260 App. Div. (N.Y.) 155; *Evans* v. *Foster*, 1 N.H. 374,

[5] Comparison may be made of cases involving the administrative setting of excessive bail in deportation proceedings. It has been held that this was subject to attack on habeas corpus. *United States ex rel. Pirinsky* v. *Shaughnessy*, 177 F. 2d 708 (C. A. 2); *Colyer* v. *Skeffington*, 265 Fed. 17 (D. Mass.), reversed on other grounds, *Skeffington* v. *Katzeff*, 277 Fed. 129 (C. A 1).

378; *In re Stegman*, 112 N.J. Eq. 72; *Ex parte Hayworth*, 34 Okla. Cr. 41, 244 Pac. 827; *Ex parte Bice*, 105 Tex. Cr. 484, 289 S.W. 43; 1 Bailey, *A Treatise on the Law of Habeas Corpus and Special Remedies* (1913), p. 488.

In several district court decisions the issue of excessive bail has been raised on motions for reduction of bail. See *United States* v. *Averett*, 26 F. 2d 676 (W.D. Va.), *Smith* v. *Lee*, 13 Fed. 28 (N.D. N.Y.); *United States* v. *Brawner*, 7 Fed. 86 (W.D. Tenn.). Such a motion is an appropriate way to raise in a trial court in the first instance a wide variety of objections to the amount set as bail, many of which lie solely within the discretion of the district judge. It has been said, and properly so (cf. *Adams* v. *United States ex rel. McCann*, 317 U.S. 269; *Sunal* v. *Large*, 332 U.S. 174), that the remedy of a motion for reduction of bail should be exhausted before recourse can be had to habeas corpus. See *Smith* v. *Henson*, 298 Ky. 182, 182 S.W. 2d 666. This prerequisite has been satisfied here. Bail for 10 of the 12 petitioners had originally been fixed by Judge Carter on August 8, 1951. After Judge Carter's disqualification, Judge Mathes entertained a renewal of the motion to fix or reduce bail on behalf of the 10 petitioners and a motion in the first instance on behalf of the remaining two.

Unlike a motion for reduction of bail, habeas corpus is not an appeal to the discretion of the

court. Relief depends upon a finding that the bail fixed is so excessive as to amount to a deprivation of constitutional right. Thus, in *Ex parte Hayworth*, 34 Okla. Cr. 41, 244 Pac. 827, the applicable provision was a section of the Oklahoma Bill of Rights which provided that "Excessive bail shall not be required." In approving the use of habeas corpus the court said (at p. 43):

> In an application to this court for habeas corpus, for a reduction of bail on the ground that the amount fixed by the trial court is excessive, it is not sufficient that this court might originally have deemed a lesser amount sufficient. It must clearly appear that the trial court has abused its discretion to an extent that denies the defendant his constitutional rights, before this court will reduce the amount of bail as fixed by the trial court; as the Constitution is supreme, and as the rights which it guarantees to the people were intended to be and should be upheld.

III

The Considerations Which Control the Determination of the Amount of Bail Justify the Bail Fixed for the Petitioners

A. The Eighth Amendment provides that, "Excessive bail shall not be required," thus embodying in Federal law the principal of the English Bill of Rights of 1689, "That excessive baile ought not to be required." Neither in England nor in any American jurisdiction has bail been regarded as

an absolute right to be fixed solely in relation to the financial means of an accused. As stated by Mr. Justice Story in *Ex parte Milburn*, 9 Pet. 704, 710:

> * * * bail, in a criminal case, is taken to secure the due attendance of the party accused, to answer the indictment, and to submit to a trial, and the judgment of the court thereon. It is not designed as a satisfaction for the offence, when it is forfeited and paid; but as a means of compelling the party to submit to the trial and punishment which the law ordains for his offence.

Rule 46(c) of the Federal Rules of Criminal Procedure reflects this fundamental purpose. It provides that:

> (c) AMOUNT. If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commissioner or court or judge or justice will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant.

It is significant that the dominant clause of Rule 46(c) is that, "the amount [of bail] shall be such as in the judgment of the commissioner or court or judge or justice will insure the presence of the defendant."

Rule 46(c) also provides that in determining the amount of bail consideration shall be given to "the

nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant.". From this portion of the Rule the applicants argue that in their case none of these factors warrant bail of $50,000, pointing out (1) that the maximum penalty may be imposed under the charge is five years' imprisonment and a fine of $10,000, (2) that other defendants charged with crimes carrying similar penalties have usually been enlarged on lesser bail, (3) that the applicants are not wealthy, and (4) that they do not have criminal records (Applicants' Memo. of Law, pp. 10-17).

The applicants' analysis oversimplifies the flexible factors which courts have always considered in fixing bail in an amount reasonably calculated to insure the appearance of an accused for trial and punishment. Thus, it is well established that bail is not made excessive merely by the inability of the accused to procure it. *People ex rel. Sammons* v. *Snow*, 340 Ill. 464, 173 N. E. 8 (1930); *Ex parte Malley*, 50 Nev. 248, 256 Pac. 512 (1927); *Ex parte Duncan*, 54 Cal. 75 (1879); *Re Scott*, 38 Neb. 502 56 N. W. 1009 (1893). Were the rule otherwise, as pointed out in *Re Scott, supra*, an accused "without means or friends would be entitled to be discharged on his own recognizance".

In *In re Robinson*, 23 L.J.Q. B.N.S. 286, 287 (1854), Justice Coleridge declared that, "The test,

in my opinion, of whether a party ought to be bailed is, whether it is probable the party will appear to take his trial." This principle was applied to circumstances greatly resembling the instant case in *Regina* v. *Butler*, 14 Cox C.C. 530 (1881). In that case, the accused, who were seeking bail pending trial, were members of a large organization which was forcefully opposing the administration of land laws. Bail was denied altogether on the ground that, "Where the offence charged has appeared to be the result of a widespread organization or conspiracy and it appears probable that if the securities given should be forfeited, the bail would be indemnified out of funds subscribed by the body of which the traversers are members, the Court has regarded security by bail unreliable, and therefore refused to admit the traversers to bail."

We do not suggest that under Rule 46 the applicants may be denied bail. However, American court have also given great weight to the likelihood of bail-jumping in fixing the amount of bail. Thus, in *Ex parte Ruef*, 7 Cal. App. 750, 753, 96 Pac. 24 (1908), high bail pending trial was upheld in view of the seriousness of the charge (bribery of public officers) and because "the greater the amount of his wealth the more readily he could give a large bail, and the more readily he could flee to some country where perhaps he could live in comfort on his possessions."

More recently, the New York Court of Appeals has emphasized the likelihood of flight as a factor

determining the amount of bail. In *People ex rel. Shapiro* v. *Keeper of City Prison*, 290 N.Y. 393, 49 N.E. 2d 498 (1943), the Court of Appeals approved the fixing of bail of $100,000 after indictment and pending trial for an accused charged with extortion, who had a criminal record, and who had once forfeited bail after an earlier conviction. The Court of Appeals noted (at p. 398) that:

> * * * As a matter of logic it might seem that a prohibition against excessive bail should imply a right to bail in appropriate amount in all cases, but the history of the law of bail negatives such an implication. At common law the courts had discretion in all cases after indictment, to grant or deny the application, although they ordinarily did grant it in all except capital cases.

In *People ex rel. Lobell* v. *McDonnell*, 296 N.Y. 109, 71 N. E. 2d 423 (1947), bail of $100,000 was approved for one indicted for thefts and forgeries totalling $780,000, where the sole evidence of likelihood of flight was a previous indictment for jumping bail. In *People ex rel. Rao, et al.* v. *Adams*, 296 N.Y. 231, 234, 72 N. E. 2d 170 (1947), the Court of Appeals upheld bail of $250,000 fixed for each of two material witnesses in a homicide investigation, on the ground that:

> In view of the facts here presented—for instance, the seriousness of the crime under investigation, murder; the character, reputation, background and extensive criminal records of

> relators; their relationship to others against whom they may be called to testify; the possibility of flight to avoid giving testimony; the difficulty, if not impossibility, of procuring their return if they do leave the State—in view, we say, of those facts among others, there was sufficient before the Judge of the Court of General Sessions to permit him, in the exercise of discretion, to fix the ~~bail~~ at $250,000 (Code Crim Pro. § 618b). While it is urged that such amount is high, it may not properly be said—on the record before us—that it was excessive as matter of law. * * *

The cases cited above simply confirm the obvious meaning of Rule 46(c), that the sole function of bail is to insure the appearance of the accused. While even a genuine likelihood of flight will not justify a total denial of bail, it must weigh heavily in determining what amount of bail will reasonably insure appearance. It follows that the financial resources of a particular defendant cannot require that bail be set in an amount insufficient to insure his appearance for trial and sentencing. An inevitable consequence of these considerations, indeed of the very purpose of bail, is that persons charged with crime are often deprived of liberty pending trial because of their inability to procure bail sufficient in amount to insure their appearance. Moreover, bail is not fixed solely in relation to the penalty which might be imposed after trial. The purpose of bail is to insure appearance, rather than

to enrich the Treasury, and likelihood that the accused may jump bail must weight more heavily in fixing the amount of bail than does his alleged inability to procure bail, the nature of the offense, or the punishment which may be imposed upon him for the substantive offense charged.

B. Applying these principles to the instant case, in the light of notorious facts, it is clear that the bail of $50,000 fixed for each of the petitioners is not an unreasonable judgment as to the amount which "will insure the presence of the defendant", within the meaning of Rule 46(c), and thus is not excessive bail within the meaning of the Eighth Amendment. It is significant in this connection that bail for some or all of the applicants has been fixed by four district judges (Goodman, Carter, Dimock, Mathes) in amounts of $50,000 or more, and that another District Judge (Harrison) and two circuit judges (Mathews and Bone) found that $50,000 bail was not excessive. Moreover, the grand jury which returned the indictment recommended bail of $100,000 for Schneiderman and $75,000 for the others. Only if it can be said that all of these seven judges were so flagrantly abusing their discretion as to violate the constitutional requirement would this Court be warranted in overturning the decision below.

The petitioners are charged with having participated in a conspiracy to advocate, and to organize the Communist Party of the United States to

advocate, the overthrow of the Government of the United States by force and violence. Congress has found that such a conspiracy exists, that it is international in scope, and that the "direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country" (Internal Security Act of 1950, Sec. 2(4)). It has been judicially determined that such a conspiracy exists. *Dennis* v. *United States*, 341 U.S. 494. Although it has not yet been proved that these petitioners are participants in that conspiracy, "the nature and circumstances of the offense charged" is one of the factors which Rule 46(c) requires to be considered in fixing bail in an amount sufficient to insure the presence of the defendant. Of particular significance is the fact that each of the petitioners is charged with acting as a leader in the same conspiracy which was found to exist in *Dennis* v. *United States, supra.*

Thus, the Department is informed that petitioner Stack has been active in the Communist Party for many years. In 1945 she was elected State organizational Secretary of the Communist Party of California. That year she was also elected as a member of the State Board of the Party, holding this position until 1948. Since then she has continued to be a very active member of the Party in San Francisco.

Petitioner Richmond, who was born in England of Russian-born parents, is Executive Editor of the

"Daily People's World," West Coast Communist newspaper. He has been associated with the "Daily Worker" and the "Daily People's World" since 1934, during which time he has, as a newspaperman and writer, actively supported the aims and purposes of the Communist Party.

Petitioner Connelly, who has been active in Communist Party work since 1938, is Los Angeles Editor of the "Daily People's World." In 1946, he was convicted on a charge of advocating violence, in connection with a strike, resulting in a riot, and sentenced to 60 days' imprisonment.

Petitioner Healey, Connelly's wife, has been engaged in Communist activities since 1928 and has been a full-time employee of the Communist Party since 1945. She is now chairman of the Los Angeles Communist Party and has also held the position of Organizational Secretary of the Los Angeles County Communist Party.

Petitioner Fox, an alien born in Germany, is water front section organizer of the San Francisco County Communist Party. He has held important positions in the Communist Party since 1936, including Educational Director, Dues Director, Branch Director, and head of the Trade Union Section of the Communist Party Northwest District.

Petitioner Schneiderman, the petitioner in *Schneiderman* v. *United States*, 320 U.S. 118, is Chairman of the California State Committee of the

Communist Party and a member of the Party's Alternate National Committee. This committee was formed by the Party to act in the absence of the 11 Communist leaders convicted in *Dennis, et al.* v. *United States*, 341 U.S. 494. After their conviction, Schneiderman went to New York where he was acting as a top executive in the national headquarters of the Party at the time of his arrest. He has been active in the Communist Party and has held important Party positions since 1927. In the middle 1930's he spent 18 months in the Soviet Union during which he attended the Seventh World Congress of the Communist International in July 1935.

Petitioner Lambert, who has long been engaged in Communist Party work, is Chairman of the Security Review Commission, District 13, Communist Party, U.S.A. As such, he is the Party's chief disciplinarian. He has held important positions in the Party since 1932, including Party organizer, Los Angeles Trade Union Director, and vice-president of the San Francisco Communist Party.

Petitioner Steinberg, who has been a member of the Communist Party since 1937, is Legislative Director of the Los Angeles County Communist Party. He was a delegate to the State Convention of the Communist Party and a member of the Central Committee of the Party during 1940. He has also been Party organizer of the Nineteenth California Congressional District and has three times run for public office on the Communist Party ticket.

Petitioner Yates, who has been a member of the Communist Party since 1933, is now State Secretary of the Communist Party of California. As such she helps determine Party policy and is responsible for the operations of the Party in California. She is also both Executive Secretary and Chairman of the Communist Party of San Francisco. Since 1934, Mrs. Yates has held other important positions in the Party, including Party organizer, Organizational Secretary for the Communist Party of San Francisco, San Francisco County Educational Director, State Election Campaign Manager, and County Secretary of the Party. She has three times been a candidate for public office on the Communist Party ticket.

Petitioner Kusnitz, who was born in Russia, has been engaged in Communist Party activities since 1929. She visited Russia in 1934. She has held many important positions in the Communist Party, including Educational Director of the Communist Party Training School, and Party Organizer. She is now Executive Secretary of the Los Angeles Committee for the Protection of Foreign Born.

Petitioner Doyle, who has been engaged in Communist Party activities since 1939, is Organizer for the Mission Section of the Communist Party, San Francisco. Since 1940 she has held important positions in the Party, including County Organizer and Secretary, member of California state committee, delegate to National Party Convention and

County Chairman. She has been a candidate for public office on the Communist Party ticket.

Petitioner Lima, who has been engaged in Communist Party activities since 1937, is East Bay Regional Chairman of the Communist Party at San Francisco. In 1940 he was a candidate for Congress on the Communist Party ticket.

The district court, therefore, could reasonably conclude that persons charged with the leadership of a highly organized and strictly disciplined conspiracy to bring about the violent overthrow of the Government would not only have little respect for the obligations of bail, but could command the means of flight. This is not mere speculation. Extraordinarily effective channels of escape are available to those charged with Communist activities, and experience has demonstrated that those so charged will and can use those channels. Efforts by the Government to apprehend them have proved almost futile. Gerhart Eisler, a Communist, fled the jurisdiction of the United States to escape punishment. *Eisler* v. *United States*, 338 U.S. 189. He forfeited bail in three proceedings, totalling $23,500. Four (Thompson, Winston, Green, Hall) of those convicted in *Dennis* v. *United States*, 341 U.S. 494, of the same conspiracy with which the applicants are charged, while enlarged on $20,000 bail each, a total of $80,000, failed to appear and surrender to serve their sentences. (Return to writ of habeas corpus, p. 4.) Only one of them,

Gus Hall, who was apprehended on October 8, 1951 in Mexico, has been found. Also, four of those subsequently indicted in New York and charged with the same conspiracy (*United States* v. *Flynn, et al.*)—James E. Jackson, Sidney Stein, Fred Fine and William Marron—have never surrendered nor been apprehended.

In the recent trial of *United States* v. *Rosenberg, et al.*, in the Southern District of New York, involving atomic espionage, David Greenglass, a co-defendant who pleaded guilty and testified for the Government, said that he had been instructed by Rosenberg to leave the United States and go to Mexico and then to Stockholm where he would be taken care of by the Soviet Union. Morton Sobell, another defendant convicted in the *Rosenberg* case, who had been engaged in Soviet espionage activities in New York, fled to Mexico shortly after the arrest of Greenglass. He was arrested by the Federal Bureau of Investigation at Laredo, Texas, upon his deportation from Mexico.

These facts were considered by Judge Harrison in denying the applicants' petitions for habeas corpus; he said, "The offenses charged are very serious and the court realizes as a matter of common knowledge that those charged with similar and related offenses the forfeitures have been above average and apprehension after forfeiture has been nil" (Memo. opinion, p. 5). In view of these past experiences, as Judge Harrison held,

how can one "say that all who have exercised their discretion are wrong" and that $50,000 bail is unnecessary "to insure the presence of the accused" (Memo. opinion, p. 4).

From the petitioners' own statements, it appears that they can put up only nominal bail from their personal resources. Since, by any standard, far more than nominal bail should be required here, they must procure bail from other sources. Accordingly, bail will be meaningless unless fixed in an amount which will give the sureties, i.e., the substitute jailors, a strong incentive to see to it that the applicants do not jump bail. Here, as in *Regina* v. *Butler, supra*, the applicants are alleged to be members of a large organization which could so readily raise smaller amounts of bail that there would be little assurance against bail jumping. Also, these applicants, while not themselves former bail jumpers, are alleged to be members of an organization the members of which have already demonstrated that much more than $20,000 bail is insufficient to insure their appearance. These circumstances, taken together, indicate a likelihood of flight by the applicants unless their appearance is secured by bail in such an amount that its forfeiture would be a serious financial loss, not merely when measured by the applicants' personal resources but also to whatever persons or organizations may put up bail. To fix bail in an amount measured solely by the personal resources of these

applicants would ignore the obvious fact that such bail will be no deterrent to their jumping bail if and when they are instructed to do so by agents of the Communist organization, which will then attempt to provide them with funds, travel documents, and refuge abroad.

CONCLUSION

The application should be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

JAMES M. MCINERNEY,
Assistant Attorney General.

ROBERT L. STERN,
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Special Assistants to the Attorney General.

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Attorneys.

OCTOBER 1951.

In the Supreme Court of the United States

OCTOBER TERM, 1951

LORETTA STARVUS STACK, AL. RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE AND ALBERT JASON LIMA, PETITIONERS

v.

JAMES J. BOYLE, UNITED STATES MARSHAL, RESPONDENT

ON PETITION FOR BAIL PENDING APPLICATION FOR A WRIT OF CERTIORARI

SUPPLEMENTAL MEMORANDUM FOR RESPONDENT

During the course of the argument Mr. Justice Frankfurther requested the Government to inquire further into whether an appeal from an order denying a motion to reduce bail should not be regarded as the proper method of obtaining appellate

review in bail matters. Such a procedure, if available, it was suggested, would make resort to habeas corpus unnecessary and accordingly inappropriate, and thereby avoid the problems as to the interpretation of Rule 45 which have arisen in this and other cases.

In the brief filed on the day of the argument and at the argument, Government counsel stated that in their opinion orders fixing or denying a reduction of bail were not appealable. This conclusion was not based on any consideration as to which method of review would be preferable as a matter of policy. It may well be that a direct appeal to a court of appeals from such an order would provide a more orderly means of securing appellate review than requiring the filing of a petition for a writ of habeas corpus as a separate proceeding in the district court and appealing from the decision in the habeas corpus case. Our conclusion was based upon an examination of the relevant legal materials which led us to believe—despite the absence of any decision of this Court on the exact question—that as a matter of law it could not be said that an appeal from an order fixing or refusing to reduce bail was available.

The factors which caused us to reach this conclusion were the following:

1. Whether or not an order on a motion to reduce bail is appealable to a court of appeals depends on whether that order is a "final decision" within the

meaning of 28 U.S.C., Supp. IV, 1291. *Berman* v. *United States*, 302 U.S. 211, 212, states that "Final judgment in a criminal case means sentence." Cf. *Korematsu* v. *United States*, 319 U.S. 432, 434. And *Cobbledick* v. *United States*, 309 U.S. 323, emphasizes the importance of avoiding a piecemeal disposition on appeal of the basic single controversy in a criminal case "where the result of review will be 'to halt in the orderly progress of a cause and consider incidentally a question which has happened to cross the path of such litigation'" (p. 326). Neither of these cases, of course, was dealing with the present problem. But the order in *Cobbledick* denying a motion to quash a subpoena *duces tecum* addressed to a *witness* before a grand jury would seem to be at least as separable from the principal criminal proceeding as an order on an application for reduced bail.[6]

More recently, in *Cohen* v. *Beneficial Industrial Loan Corporation*, 337 U.S. 541, 545-547, the Court held that an order determining the right to security in a civil case was separately appealable, saying (p. 546):

> This decision appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied

[6] The *Cobbledick* case is distinguishable in that an appeal from a bail order would not necessarily interrupt the progress of the main case and in that the witness apparently may test the validity of a subpoena in a contempt proceeding.

review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. The Court has long given this provision of the statute this practical rather than a technical construction. *Bank of Columbia* v. *Sweeny*, 1 Pet. 567, 569; *United States* v. *River Rouge Co.*, 269 U.S. 411, 414; *Cobbledick* v. *United States*, 309 U.S. 323, 328.

The *Cohen* opinion then continues (p. 547):

> But we do not mean that every order fixing security is subject to appeal. Here it is the right to security that presents a serious and unsettled question. If the right were admitted or clear *and the order involved only an exercise of discretion as to the amount of security, a matter the statute makes subject to reconsideration from time to time,* appealability would present a different question. [Italics supplied.]

The last sentence quoted would appear to cover cases involving the *amount* of bail, inasmuch as the trial court has power to increase or decrease the amount of bail from time to time whenever the circumstances so require. *E.g., United States ex rel. Rubinstein* v. *Mulcahy*, 155 F. 2d 1002 (C.A. 2); Rule 32 (a), F.R. Crim. P.; 18 U.S.C., Supp. IV, 3143.

Although the *Cohen* case leaves open the question as to the appealability of a decision with respect to the amount of security, the last sentence quoted seems to imply that such orders would not be ap-

pealable. We must concede, however, that the cases in this Court dealing with analogous problems cannot be said to be dispositive of the question here in issue. We, therefore, turn to other considerations.

2. It is, of course, true that a decision fixing bail or refusing to reduce bail, has the effect of determining a person's rights and status for the period *pendente lite*. But this does not in itself make the order a "final decision" within the meaning of Section 1291. The same is clearly true of orders granting or denying interlocutory injunctions, which are the equivalent of bail on the civil side inasmuch as they may have the effect of granting the final relief sought by the complainant during the pendency of the proceeding. And yet it seems to have been assumed that unless specific provision were made in the statute permitting appeals from interlocutory injunctions and other types of interlocutory orders, they would not be appealable. For that reason, Section 1292 lists the types of interlocutory orders from which appeals are authorized. Orders as to bail were not included.

3. In so far as we have been able to ascertain, in the time available for research, there has not been a single reported case in the federal courts in 162 years in which an appeal has been taken from an order fixing or refusing to reduce bail before conviction—or indeed any case in which

the problem as to the appealability of such an order has ever been discussed. Since, undoubtedly, many persons have been dissatisfied with bail orders in that period, the failure of their counsel ever to try to appeal from such orders manifests a general understanding on the part of the bar that such an appeal does not lie. This conclusion is reinforced by the fact that in a number of states having comparable statutory systems, direct appeals from bail orders have not been allowed. See footnote 4, page 10, main brief, and *Miller* v. *State*, 43 Tex. 579 (1875).

4. In contrast, the federal courts, prior to this case, and a number of state courts, have held that a claim that bail was excessive may be raised on habeas corpus and then appealed. See cases cited in our main brief, pp. 10-12, and *Ex parte Ryan*, 44 Cal. 555 (1872). It is true that there have not been very many such cases in the federal courts. But what cases there are—up to this one—all go in the same direction, as do the state decisions and secondary authorities which purport to summarize the general law on the point. 39 C.J.S. 538[7]; 25 Am. Jur. 210[8]; Church, *Habeas Corpus* (2d ed. 1893), 632-633.

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[7] "Where a prisoner is held under excessive bail, the imprisonment is illegal, and habeas corpus lies to obtain a discharge on bail in a proper amount."

[8] "It is a general rule that habeas corpus lies to procure the discharge upon bail in a proper amount of one who is held under excessive bail, provided, in some jurisdictions, that application has been first made to the lower court for reduction of the amount of bail."

It was suggested at the argument that such cases as *Rubinstein* are not of significance since they do not specifically say that a remedy by appeal from an order refusing to reduce bail is not available. But if it had been thought that a simple remedy by direct appeal had been open, habeas corpus would not have been an appropriate remedy, and it cannot be assumed that the Second Circuit or the other courts which have come to a similar conclusion would have overlooked such an obvious principle. The unspoken premise of these decisions seems to be that the matter cannot be resolved by direct appeal.[9]

5. The lower court case most closely in point is *Browder* v. *United States*, 168 F. 2d 418 (C.A. 5), which held unappealable an order *revoking* bail. This would seem sufficiently close to an order refusing to reduce bail to be substantially indistinguishable. If anything, an order revoking bail entirely would seem to be of greater finality.

United States v. *Motlow*, 10 F. 2d 657 (Butler, J., C.A. 7), was concerned with bail *after* conviction and pending appeal.[10] This is governed by different Rules, which specifically allow an appellate court or judge or a circuit justice to fix bail in such circumstances—on motion or application, not by

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[9] The general statement in 39 C. J. S. 538, that habeas corpus lies when a prisoner is held under excessive bail is qualified by "the rule that the writ may be denied where there is another adequate remedy."

[10] *Hewitt* v. *United States*, 110 F. 2d 1, 6 (C. A. 8), and cases cited are distinguishable for the same reasons.

appeal—and accordingly has no application here. See Rules of Crim. Proc. 39(a), 46(a)(2).

We would agree that if a direct appeal from a refusal to reduce bail were allowable, habeas corpus would be an inappropriate remedy except conceivably in very unusual circumstances. The foregoing considerations, however, have led us to the conclusion that the order as to bail is not directly reviewable.

Respectfully submitted.

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In the Supreme Court of the United States

OCTOBER TERM, 1951

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE AND ALBERT JASON LIMA, *Petitioners*,

v.

JAMES J. BOYLE, United States Marshal,
Respondent.

On Petition for Bail Pending Application for a Writ of Certiorari and on Petition for a Writ of Certiorari

---

MEMORANDUM FOR RESPONDENT IN REPLY TO PETITIONERS' MOTION OF OCTOBER 24, 1951.

In the Supreme Court of the United States

OCTOBER TERM, 1951

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE AND ALBERT JASON LIMA, *Petitioners,*

v.

JAMES J. BOYLE, United States Marshal,
Respondent.

On Petition for Bail Pending Application for a Writ of Certiorari and on Petition for a Writ of Certiorari

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MEMORANDUM FOR RESPONDENT IN REPLY TO PETITIONERS' MOTION OF OCTOBER 24, 1951.

On October 24, 1951, the respondent was served by the petitioners in the above-entitled cause with a "Motion to dispense with printing of transcript of records on appeal, petition for writ of certiorari

and briefs, and, in the event certiorari is granted, submitting the cause on briefs and arguments of counsel before the court." Specifically, the motion requests, *inter alia,* that in the event certiorari is granted the cause be submitted on the briefs and arguments of counsel already presented to the Court. On October 24, there was filed with the Court the certified typewritten record from the Court of Appeals for the Ninth Circuit, and on October 25, a petition for a writ of certiorari was docketed. The petition for a writ of certiorari challenges as excessive under the Eighth Amendment the bail fixed for each of the petitioners by District Judge Mathes subsequent to their indictment for violation of the Smith Act.

1. As we have already indicated to the Court, we do not oppose dispensing with printing in this cause. Also, in the event certiorari is granted, we are willing to rest the cause upon the briefs and oral argument already presented to the Court, and upon this memorandum.

2. Examination of the record filed with the Court reveals a serious question not heretofore briefed by the parties or argued before the Court on October 18. The portion of the record involved is the transcripts of the proceeding before District Judge Mathes on August 15, 1951, on the return to writs of habeas corpus issued on behalf of 10 of the petitioners (all but Connelly and Schneiderman) and of the proceeding on August 29, 1951, in

which he entertained motions to reduce bail for the petitioners other than Connelly and Schneiderman and to fix or reduce bail for Connelly and Schneiderman.[1] This question is whether the petitioners could be said to have sustained their burden of proof on their contention that bail had been fixed in excessive amounts, when all of them, except the petitioner, Rose Chernin Kusnitz, refused, claiming the privilege against self-incrimination, to answer questions which were clearly pertinent in the discharge of the district court's duty to determine the amount of bail under Rule 46(c) of the Federal Rules of Criminal Procedure. A related question is whether such refusal precludes each of the petitioners, except Rose Chernin Kusnitz, from challenging the amounts of bail fixed by Judge Mathes as excessive.

Rule 46(c) of the Federal Rules of Criminal Procedure provides that:

> AMOUNT. If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commissioner or court or judge or justice will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant.

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[1] In the bail proceedings on August 29, it was stipulated and ordered that the record therein should include the record of the habeas corpus proceedings of August 15.

Under Rule 46(c), it is the duty of a Federal judge to inquire into the enumerated circumstances in determining what amount of bail "will insure the presence of the defendant."

During the proceedings[2] before Judge Mathes, each of the petitioners (except Kusnitz) refused to answer, upon grounds of self-incrimination, various questions, as follows:

Petitioner *Healey* refused to state the name of her employer, who pays her salary (1 R. 24-25), and how long she had been in her present job (1 R. 59).

Petitioner *Lambert* refused to state the name of his employer or his wife's employer (1 R. 28), whether he was paid by check or in cash (1 R. 29), and how long he had been in his present job (1 R. 60).

Petitioner *Doyle* refused to state the name of her employer, whether she was paid by check or cash (1 R. 30), and how long she had been in her present job (1 R. 60).

Petitioner *Stack* refused to state what her employment had been prior to March 1951, when she commenced to work for a San Francisco bakery (1 R. 33-34).

Petitioner *Richmond,* in response to questions, stated that he was employed by the Pacific Publishing Foundation as executive editor of the Daily

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[2] We shall refer to the typewritten record of the proceedings on August 15 as 1 R., and to the typewritten record of the proceedings on August 29 as 2 R.

People's World and the method by which he was paid (1 R. 35), his wife's employment, and the value of their real estate (1 R. 36). He also stated that he did not know who was the president of the Pacific Publishing Foundation (1 R. 42), that "the exact ownership I am really not aware of, as to who holds what stock and so on" (1 R. 41) that, "In terms of my operation there is no immediate superior" and that he was not the owner of the Pacific Publishing Foundation (1 R. 43). Thereupon, he refused to state what person had originally employed him as executive editor of the Daily People's World (1 R. 43).

Petitioners *Lima* (1 R. 47, 48, 61), *Steinberg* (1 R. 48, 49, 61), and *Yates* (1 R. 52, 53, 62) refused to state the names of their employers, whether they were paid by check or in cash, and how long they had been in their present jobs.

Petitioner *Fox* refused to state the name of his employer, whether he was paid by check or in cash (1 R. 50), the name of his wife's employer and whether she was paid by check or in cash (1 R. 51), and how long he had been in his present job (1 R. 61-62).

Petitioner *Schneiderman* refused to state his present occupation, where employed, who pays him, and how long he had been in his present job (2 R. 24-27). In fact, the only answer which he would give to any question was to state that he was paid by the week (2 R. 26).

Petitioner *Connelly* stated that he was employed as Los Angeles bureau editor of the People's Daily World, that he had been so employed for about two years, and that he was paid on a weekly basis (2 R. 27-30). However, he refused to answer the question, "Who or what organization is the owner of the Daily People's World that employs you" (2 R. 28-29), and whether he was paid by check or in cash (2 R. 30).

We do not dispute the right of each of the 11 petitioners listed above to assert the privilege against self-incrimination in response to these questions. However, we suggest that by refusing to answer the questions that the 11 petitioners have failed to maintain their burden of showing that the bail fixed for each of them by Judge Mathes is excessive and that by blocking in substantial respects the inquiry which it was the judge's duty to make under Rule 46(c), they may not now assert that his action was erroneous, i.e., that the bail is excessive.

As noted above, Rule 46(c) directs Federal judges in fixing bail to take into consideration, *inter alia*, "the financial ability of the defendant to give bail and the character of the defendant." While each of the petitioners has stated his weekly income, petitioners Healey, Lambert, Doyle, Lima, Steinberg, Fox, Yates, and Schneiderman refused to disclose the names of their employers. Clearly, the employer would be an obvious and reliable source of verification of those petitioners' statements as to their incomes, and the question was

thus relevant to the inquiry under Rule 46(c). A similar purpose justified the questions to petitioners Lambert and Fox as to the names of their wives' employers, the question to Stack as to her employment prior to March 1951, the question to Richmond as to what person had employed him as executive editor of the Daily People's World, the question to Schneiderman as to his occupation, and the question to Connelly as to the ownership of the Daily People's World which employed him. The refusal of seven petitioners to state whether they were paid by check or in cash would preclude both the court and the prosecution from obtaining through bank records the names of employers and the amounts of income or funds available to petitioners. Even as a general proposition, it would seem to be clear that a Federal judge proceeding under Rule 46(c) would not be bound to accept without inquiry defendants' general statements as to their financial ability. In the instant case of defendants indicted for violation of the Smith Act, it was clearly Judge Mathes' duty, under the Rule, to make such inquiries in view of the recent record of bail jumping by other individuals convicted or indicted for violation of the Smith Act.

Similarly, the petitioners' employers would be an obvious source of information as to character —particularly in terms of truthfulness and punctual discharge of obligations. Again, answers to the question addressed to eight of the petitioners as to how long they had been employed in their pres-

ent jobs would be indicative of the strength of their ties to the jurisdiction. Recent bail jumping in relation to Smith Act prosecutions would seem to make such inquiries as to character and ties to the jurisdiction unusually appropriate under Rule 46(c).

We assume that the 11 petitioners were entitled to refuse to answer these questions upon the ground of possible self-incrimination, and that their assertion of the privilege against self-incrimination cannot be held against them in the sense of affirmatively justifying bail in a particular amount. See *Zydok* v. *Butterfield*, 187 F. 2d 802, 804, certiorari granted October 8, 1951. However, the petitioners may not, by claiming that privilege, cast off their burden of showing that their bail was fixed in excessive amounts. Even on a direct appeal, there would be a presumption that the district judge correctly exercised his discretion in fixing bail. Certainly no less a presumption exists when his action is challenged by habeas corpus proceedings. The burden is upon the petitioners to show that in the light of their financial ability and the other factors enumerated in Rule 46(c) the district judge fixed bail in an excessive amount, rather than in an amount necessary to insure their appearance. They cannot sustain this burden by foreclosing relevant avenues of inquiry and insisting that the courts accept upon faith whatever statements the petitioners choose to make. The Fifth Amendment does not endow silence with

such persuasiveness. For analogous situations, see *Norwegian Nitrogen Products Co.* v. *United States,* 288 U.S. 294, 323-324; *The Consul Corfitzon* [1917] A.C. 550, 555-556; *The Kronprinzessin Victoria* [1919] 261, 267-268; *In re Von Kantzow's Patent* [1944] Ch. Div. 318, 321.

Judge Mathes attempted to perform his duty under Rule 46(c) by addressing relevant questions to the petitioners. As indicated above, all of the petitioners, except Kusnitz, blocked his inquiry by refusing to answer such questions. By so doing, the 11 petitioners precluded themselves from challenging as excessive bail fixed in any amount within reason. Thwarted as he was in seeking to amplify and verify the circumstances as to the petitioners' financial position and character, and considering, as he was bound to do, the possibility of the petitioners' flight as evidenced by the disappearance of other defendants in Smith Act cases, we do not know by what standard the petitioners can now claim that Judge Mathes fixed their bail in excessive amounts.

The foregoing discussion of the effect of the petitioners' refusal to answer questions relevant to the inquiry under Rule 46(c) has no application to the petitioner Kusnitz, who answered the questions addressed to her in the proceedings before Judge Mathes. However, in view of the purpose of bail to insure the appearance of defendants, and considering the likelihood of flight as established by the disappearance of defendants in other Smith

Act cases, we urge that the district court properly exercised its discretion in fixing her bail at $50,000.

Generally, we contend that on the record as a whole, and in the light of facts subject to judicial notice, the petitioners have made no showing that their bail was fixed in excessive amounts. Even if 11 of the petitioners had not blocked Judge Mathes' inquiry under Rule 46(c), they could not assert that bail must be tailored to their particular financial abilities. Bail is to be fixed in such amount "as in the judgment of the * * * court * * * will insure the presence of the defendant," and the financial ability of a particular defendant to give bail is only one of the factors to be considered in fixing bail. Equal weight is to be given to the nature and circumstances of the offense charged, while the dominant consideration is to "insure the presence of the defendant." In applying Rule 46(c), we believe that a court should not ignore, as petitioners contend it should, the fact that these petitioners are charged with active and leading roles in the same Communist conspiracy which was found to exist in *Dennis* v. *United States*, 341 U.S. 494, and the fact that other persons indicted or convicted on similar charges have disappeared or have jumped bail. Nor should the fact be ignored that when such persons have jumped bail, the courts have received not even minimum cooperation from those who became surety for their appearance. (See Mr. Justice Reed's Opinion of July 25, 1951, on the application of Field, et al. for

bail). The facts were such as to make the fixing of bail in the instant cases more than a perfunctory routine. That the district judge was precluded from making the inquiry required by Rule 46(c) is simply another reason why his action in fixing bail for the petitioners constituted a reasonable exercise of discretion.

CONCLUSION

It is respectfully submitted that the bail fixed for the petitioners is not excessive.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER, 1951

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, Petitioners, vs. JAMES J. BOYLE, United States Marshal, Respondent.	PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE WILLIAM O. DOUGLAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES:

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBER, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, the petitioners above named, hereby petition this Honorable Court for a writ of habeas corpus directing the respondent James J. Boyle, United States Marshal for the Southern District of California, in whose custody petitioners are now restrained of their liberty, to produce the bodies of your petitioners before this Court at a time and place specified and then and there to show cause why petitioners should not be released from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court; and in support thereof, your petitioners allege as follows:

I

On July 25, 1951, Howard V. Calverley, a United States Commissioner in the Southern District of California, issued

separate warrants for the arrests of petitioners pursuant to complaints signed by agents of the Federal Bureau of Investigation charging each of the petitioners with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671; 18 U.S.C. Sections 371, 2385.

II

Early on the morning of July 26, 1951, the F.B.I. agents proceeded to arrest petitioners. Seven were arrested in San Francisco. Their names are Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Al Richmond, Ernest Otto Fox, Loretta Starvus Stack and Mary Bernadette Doyle. Four were arrested in Los Angeles on the same day; their names are Dorothy Rosenblum Healey, Philip Marshall Connelly, Rose Chernin Kusnitz and Henry Steinberg. One was arrested in New York; his name is William Schneiderman.

III

In Los Angeles the persons arrested were arraigned before the United States Commissioner on July 26, 1951. The United States Attorney informed the Commissioner that a grand jury would be convened on August 1, 1951 and that it would take some time for the said grand jury to consider the evidence. His estimate was at first three weeks, later reduced to two. At the Government's request, bail was fixed by the Commissioner in the sum of $75,000 for each person pending the preliminary examination set for August 9, 1951. Since none of the persons arrested in Los Angeles were financially able to furnish the bail fixed by the Commissioner, each was confined in the County Jail of the County of Los Angeles in the custody of the United States Marshal, the respondent herein.

IV

In San Francisco, the seven persons arrested were brought on July 26, 1951 before a United States Commissioner in the Northern District of California. The Government requested that bail be denied. This the Commissioner declined to do. The Government then

requested bail in the sum of $75,000 for each person. The Commissioner acceded to that request except in the cases of Mary Bernadette Doyle and Loretta Starvus Stack where bail was fixed in the sum of $2,500, and in the case of Oleta O'Connor Yates, at $7,500. The last three persons furnished bail and were released from custody. The others were unable to furnish bail and were confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal for the Northern District of California.

V

On the next day, July 27, 1951, the persons in San Francisco who were in custody with bail fixed at $75,000 moved in the United States District Court for the Northern District of California for a reduction in bail; at the same time, the United States Attorney moved in the same Court for an increase in bail for the three persons who had been released on bail in accordance with the order of the United States Commissioner. These motions came on for hearing before the Honorable Louis E. Goodman, a Judge of the United States District Court for the Northern District of California. The said District Judge, ruling that the narrow question before him was the amount of bail which should be fixed pending removal of the arrested persons to the Southern District of California where the complaints had originally issued, fixed bail in the sum of $50,000 for the seven individuals. As a result, the three persons who had originally been released were confined along with the four others in the County Jail in the custody of the acting United States Marshal.

VI

On July 28, 1951, each of these seven individuals filed a petition for writ of habeas corpus to the said Honorable Louis E. Goodman maintaining that they were illegally confined and praying for their release on reasonable bail. The said petitions were

denied on July 28, 1951, the District Court adhering to its ruling of the previous day.

VII

In New York, William Schneiderman was held in $100,000 bail by the United States Commissioner pending removal proceedings, which bail was later reduced on August 7, 1951, by Honorable Edward J. Dimock, a Judge of the United States District Court for the Southern District of New York to $50,000.

VIII

In Los Angeles, on July 27, 1951, petitions for writs of habeas corpus for the four persons there arrested were filed in the United States District Court for the Southern District of California, Central Division. Orders to show cause why the petitions should not be granted were issued by the Honorable Leon R. Yankwich, a Judge of the said District Court, and made returnable on July 31, 1951 at 10 A.M.

IX

When counsel for the four petitioners appeared in the courtroom of the aforesaid District Judge on July 31, 1951 at 10 A.M., the Court was informed by the United States Attorney that an indictment had been returned by the grand jury that morning charging the twelve persons above named with conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671; 18 U.S.C. sections 371, 2385. In view of the return of the indictment on July 31, the said Honorable Leon R. Yankwich was compelled to hold that the habeas corpus proceedings had become moot and the orders to show cause why the petitions for writs of habeas corpus should not be granted were thereupon discharged.

X

On the said July 31, 1951, and immediately after the aforementioned proceedings were terminated, the four Los Angeles petitioners were brought before the Honorable James M. Carter, a

Judge of the United States District Court for the Southern District of California, Central Division, before whom the indictment had been returned. At the outset, an oral motion was made to disqualify the said Judge upon the grounds of personal bias and prejudice against the said petitioners and in favor of the adverse party. The said oral motion was denied and petitioners advised the Court that they would file a formal affidavit of bias and prejudice. Thereupon, the Court announced that it was fixing bail in an amount recommended by the grand jury. A notation upon a copy of the indictment indicated the sum of $75,000 next to the names of all defendants except the defendant William Schneiderman, where the notation was $100,000. These notations were unsigned.

XI

On August 1, 1951, the seven petitioners in San Francisco were removed from the County Jail therein and brought to the County of Los Angeles and confined in the County Jail of the County of Los Angeles together with the four Los Angeles petitioners, all in the custody of the United States Marshal, the respondent herein. On the next day, August 2, 1951, the seven were brought before the said Judge James M. Carter and arraigned. At the time of the arraignment, no reference was made to bail and all the said petitioners continued confined in the County Jail.

XII

On August 6, 1951, all of the petitioners except William Schneiderman moved in the United States District Court to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount. Under the rules of the Court this motion was required to come before the said Judge James M. Carter.

XIII

Before the argument on the motion to fix or reduce bail commenced, the aforesaid petitioners except William Schneiderman

jointly filed an affidavit of personal bias and prejudice pursuant to the provisions of 28 U.S.C. Section 144, and requested the said Judge James M. Carter to disqualify himself and to proceed no further with respect to the bail proceedings. The said Judge on August 7, 1951 declined to disqualify himself and held the affidavit of bias and prejudice legally insufficient.

XIV

In the case of one of the petitioners, Philip Marshall Connelly, a request was thereupon made that the Court stay its ruling on the motion to fix or reduce bail until the question of the Court's disqualification could be tested by appropriate appellate proceedings. This request was granted and the Court took the said Connelly motion under submission but withheld a ruling pending determination by the Court of Appeals for the Ninth Circuit.

XV

In the case of the other petitioners except William Schneiderman, the motion to fix or reduce bail was thereupon argued before the said Judge James M. Carter and on August 8, 1951, the said Judge James M. Carter fixed bail for all the said petitioners in the sum of $50,000 except the petitioners Oleta O'Connor Yates and Loretta Starvus Stack where bail was fixed in the sum of $25,000. Since all of the petitioners were wholly unable to furnish bail in the amounts fixed as aforesaid, they remained confined in the County Jail of Los Angeles in the custody of the respondent.

XVI

On August 13, 1951, the aforesaid petitioners filed separate petitions for writs of habeas corpus claiming that they were illegally detained because the bail fixed by the said Judge James M. Carter was excessive and praying for their release on reasonable bail. The writs were issued and made returnable before Honorable William C. Mathes, a Judge of the United States District Court for the Southern District of California, on August 15, 1951,

and after hearing, the said Judge Mathes by orders dated August 17, 1951, dismissed the aforesaid petitions and discharged the writs. Notices of Appeal from the aforesaid orders were filed on August 18, 1951.

XVII

In New York, the petitioner, William Schneiderman, who had not contested the removal proceeding, was on August 14, 1951 removed from New York to Los Angeles where he arrived on August 17, 1951. The said petitioner was on that day arraigned before Judge James M. Carter, and remanded to the custody of the respondent herein. No reference was made to bail at the time of arraignment.

XVIII

On August 24, 1951, the Court of Appeals for the Ninth Circuit rendered its decision on the application of the petitioner Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter and held that the aforesaid affidavit of bias and prejudice was legally sufficient and ordered the said Judge to proceed no further respecting the said petitioner's bail proceedings or in connection with his prosecution under the indictment. Connelly v. The United States District Court, etc., No. 13,053, August 24, 1951. A copy of the opinion will be submitted to the Court on the filing of this petition.

XIX

In view of the decision of the Court of Appeals for the Ninth Circuit on the sufficiency of the joint affidavit of bias and prejudice, a serious question was created as to the power or jurisdiction originally of the said Judge James M. Carter to fix or reduce bail for the other petitioners herein who jointly signed the affidavit of bias and prejudice. In order to remove this question from the bail proceedings on appeal the petitioners decided to withdraw their appeals. On August 27, 1951, counsel for the respective parties stipulated in writing to dismiss the appeals,

The said stipulation was filed with the Clerk of the Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court, and thereafter, upon the said stipulation, the mandates of the Court issued dismissing the appeals.

XX

Thereupon, and on August 29, 1951, all of the petitioners herein were brought before Judge James M. Carter and the said Judge formally disqualified himself from any further proceedings in the cause. On the same day, the Chief Judge of the District Court, Honorable Paul J. McCormick, assigned the cause to the aforesaid Honorable William C. Mathes.

XXI

On August 29, 1951, all of the petitioners appeared before the Honorable William C. Mathes. In view of the disqualification of the aforesaid Judge James M. Carter, Judge Mathes ruled that he would entertain a renewal of the motion to fix or reduce bail on behalf of all the petitioners except petitioners Connelly and Schneiderman, and as to the said two petitioners, would hear the aforesaid motion in the first instance on their behalf.

XXII

After hearing, and on August 30, 1951, the said Judge William C. Mathes fixed bail for each of the petitioners in the amount of $50,000.

XXIII

On September 4, 1951, each of the petitioners filed their petitions for writs of habeas corpus claiming that their detention was illegal and arbitrary; that the bail fixed was so excessive and so unreasonable as to constitute a denial of their right to bail under the Constitution and laws of the United States; and a deprivation of their right to properly defend themselves against the charges laid in the indictment in accordance with due process of law.

XXIV

After return and hearing held on September 6, 1951, before the Honorable Ben Harrison, a Judge of the United States District Court for the Southern District of California, the said petitions, treated as a joint petition upon the stipulation of the respective parties, were denied on September 12, 1951 and the orders to show cause why the petitions should not be granted discharged.

XXV

On September 12, 1951, the petitioners appealed to the Court of Appeals for the Ninth Circuit from the order denying their petitions for writs of habeas corpus and discharging the aforesaid orders to show cause, and said appeal came on for argument before the said Court on September 20, 1951, and the said order of the District Court was thereafter affirmed by the said Court of Appeals for the Ninth Circuit by a divided Court. A copy of the opinion of the said Court will be submitted to this Court with the petition herein.

XXVI

The transcripts of the records on appeal before the Court of Appeals for the Ninth Circuit for each of the petitioners herein (identical except as to variations resulting from the statements made concerning their individual backgrounds) will be submitted to this Court with the petition herein. The said transcripts of the records on appeal (named hereafter as "The Transcripts") will be referred to in the petition herein and are incorporated in this petition by reference and made a part hereof as if fully set forth at length. The transcripts show that only questions of law are involved in these proceedings; there have been no controverted issues of fact. The principal basis for the rulings of the lower courts herein was the failure of four persons to appear in the Southern District of New York after their judgments of conviction were affirmed by this Court in Dennis, et al v. United States, although these petitioners in Los Angeles have not been shown to have any connection, directly or indirectly, with the aforesaid persons.

XXVII

The petitioners have resided in California for 30 years (Healey); 9 years (Stack); 4 years (Lima); 37 years (Kusnitz); 21 years (Lambert); 15 years (Steinberg); 41 years (Yates); 6 years (Fox); 46 years (Doyle); 13 years (Richmond); 39 years (Connelly); 16 years (Schneiderman). A more detailed statement relative to the residences of petitioners is contained in their individual petitions set forth in the Transcripts.

XXVIII

All of the petitioners are citizens of the United States except petitioner Fox who was brought to this country at the age of four and has been for the past fifteen years married to a citizen of the United States.

XXIX

The family relationships of petitioners are as follows: Healey -- married, son, age 8, mother, age 66, one brother and two sisters; Stack -- maried, son, age 8 and daughter, age 3, elder child chronically ill; Lima -- married, three children, ages 8, 2 and 2 months; Kusnitz -- married, daughter, age 11; Lambert -- married; Steinberg -- married, four daughters, ages 4, 9, 9, 11, mother, age 65 and one sister; Yates -- married; Fox -- married; Doyle -- unmarried; Richmond -- married, two minor children; Connelly -- married, daughter; Schneiderman -- married, daughter, age 7.

XXX

The financial ability of the petitioners is as follows: Healey -- $50 per week, husband a co-defendant, no assets except automobile; Stack -- between $40 and $45 per week; husband $60 to $65 per week, no assets except small commercial bank account and automobile; Lima -- $60 per week, no assets except automobile; Kusnitz -- $30 per week and $25 expenses, husband approximately $550 per month, own home, paid $12,000, mortgage about $8,000,

about $500 in bank; Lambert -- $50 per week, wife $40 per week, no other assets except lot worth $750; Steinberg -- $58.50 per week, no assets except home and automobile; Yates -- $40 per week, owns home, purchase price $4,000, no other assets except automobil and $500 in bank; Fox -- $40 per week, wife, $60 to $65 per week; Doyle -- $47 per week, no other assets; Richmond -- $50 per week, purchasing home he lives in; Connelly -- $50 per week, no other assets; Schneiderman -- $50 per week and expenses, no other assets

XXXI

The character of the petitioners is reflected in the following: Six of the petitioners (Richmond, Doyle, Yates, Lambert Kusnitz and Stack) have no previous criminal record of any kind. There is a deportation proceeding pending against Fox. Steinberg was charged with civil and criminal contempt in 1948 and convicted but his conviction was reversed by the Court of Appeals for the Ninth Circuit. He also was charged with violation of a County Registration Ordinance, but upon motion to dismiss the complaint against him, the Ordinance was held unconstitutional and he was released. Lima was arrested once in 1935 for picketing activities but his trial resulted in a jury disagreement and the charges were dismissed on motion of the prosecutor. Healey was arrested for picketing activities in 1934. Her conviction for civil and crimin contempt, in 1949 as in the case of Steinberg, was reversed by the Court of Appeals for the Ninth Circuit. Petitioners Lambert, Richmond, Lima and Steinberg served in the military forces of the United States during World War I or World War II and all have honorable discharges from the armed services. Petitioners Yates, Doyle, Healey and Steinberg have either held public office in the State of California or been candidates for public office in the State. A more detailed statement relative to the character of petitioners is contained in their individual petitions set forth in the Transcripts.

XXXII

The conditions of health and medical attention required by petitioners are as follows: Petitioner Lambert is prone to tuberculosis and suffers from migraine headaches and is under the regular care of a physician for that malady. Petitioner Healey suffers from a similar condition. Petitioner Doyle suffers from a pituitary tumor which has required abdominal surgery and deep x-ray therapy. She was recently advised of the existence of a uterine tumor, and has suffered a heart attack and bronchial disorders from these serious organic conditions. Petitionér Yates has a heart condition diagnosed as excessive palpitation, requires regular treatment with medication and use of pheno-barbitol, has suffered a collapse of the left side of her lung, and has arthritis in the fingers of one hand and in her knee. Petitioner Stack has a thyroid deficiency, a uterine tumor which requires immediate surgical treatment, and suffers from chronic attacks of tonsilitis. Petitioner Connelly suffers from multiple glandular deficiency and hypertensive heart disease. He is in need of special diet, and frequent medical observation of his blood pressure and fast heart. A more detailed statement of the health conditions of the petitioners is contained in each of their petitions as set forth in the Transcripts.

XXXIII

Petitioners hereby state and represent to this Court that they intend in good faith to remain and that they will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that they do not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioners believe that they are not guilty of the offense charged in the indictment and they intend to vigorously prosecute their defense. Petitioners believe that upon the trial of this

indictment herein, they will be entitled to a verdict of not guilt and that a conviction upon the allegations thereof would deprive them of liberties secured to them by the Constitution of the Unite States.

XXXIV

Petitioners further aver that when they have on prior occasions been involved in legal proceedings as aforesaid, they have been released on bail, or on their own recognizance (Healey, Steinberg and Fox); and even after conviction and on appeal have always attended all proceedings whenever required. The petitioner Healey was sentenced to 18 months imprisonment after her convictio for contempt as aforesaid and yet was released on bail in the sum of only $500 pending appeal, which bail was finally exonerated after the conviction was reversed on appeal as aforesaid.

XXXV

Prior to the arrests herein as aforesaid, the public press had openly reported that Smith Act prosecutions were contemplated soon in various parts of the country including California. Some of the petitioners had been followed by agents of the Federal Bureau of Investigation, had been aware that arrests were pending, but they had made no attempt to leave the area, to avoid detection or to avoid arrest and had at all times intended to be present and defend themselves in any trial which might eventuate. Details of the aforesaid are contained in the petitions set forth in the Transcripts.

XXXVI

The onerous limitations which are placed upon petitioners in preparing for trial while confined under the excessive bail fixed herein are set forth in the concluding paragraphs of each of the petitions contained in the Transcripts. The wide scope of of the trial under the indictment will include the examination of programs, policies, and ideas embodied in hundreds of books,

publications, newspapers and periodicals, the examination of files, records and libraries, the preparation of scores of witnesses, conferences with attorneys and witnesses, the examination and analysis of the record in United States v. Dennis including some 600 exhibits, and other multifold tasks required as a result of broad charges contained in this conspiracy indictment. Even if released on reasonable bail, the problems that the petitioners will encounter in preparing for trial on the date set by the District Court will be almost insuperable.

XXXVII

Your petitioners are wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had herein which have confined your petitioners in the County Jail have unlawfully deprived petitioners of liberty and abridged the rights guaranteed petitioners by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed to the petitions contained in the Transcripts and made a part hereof clearly reveal that petitioners have been denied equal justice by the action of the District Court in fixing bail at the grossly excessive sum of $50,000.

XXXVIII

Petitioners are advised by counsel that under the Constitution petitioners are entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioners are entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXXIX

In view of the facts and circumstances hereinabove set forth, petitioners respectfully submit to the Court that petitioners are at the present time unlawfully imprisoned and restrained of their

liberty; that petitioners' imprisonment and detention are illeg
arbitrary and a denial of rights secured to petitioners by the
Constitution of the United States and that bail in the sum of
$50,000 for each petitioner is so excessive and so unreasonable
to constitute an absolute denial of petitioners' rights to bail
and petitioners' rights as a matter of due process of law to
properly defend themselves against the charges which have been
brought against them.

XL

That no previous application for a writ of habeas corpus
has been made in this matter to any other court except as here
above alleged.

XLI

Petitioners have no plain, speedy and adequate remedy at

XLIII

So far as the petition herein refers to the personal back
ground and circumstances of the individual petitioners, the pe
tion is verified by each of the petitioners solely with respec
those matters which relate to each of said petitioners. In al
other respects, this petition is verified jointly by all petit
ers in their joint behalf.

WHEREFORE, petitioners pray that a writ of habeas corpus
issue directed to James J. Boyle, United States Marshal, South
District of California, Central Division, and to any other off
having custody of the bodies of your petitioners, commanding h
to have the bodies of your petitioners produced before this Co
at a time and place to be specified, to do and receive what sh
then and there be considered concerning your petitioners toget
with time and cause of petitioners' detention and said writ; a
that this honorable Court order and direct that petitioners be
released from such custody forthwith upon such reasonable bail
as may be determined in the premises.

DATED: This _____ day of October, 1951.

Carl Rude Lambert	Loretta Starvus Stack
Carl Rude Lambert	Loretta Starvus Stack
Henry Steinberg	Al Richmond
Henry Steinberg	Al Richmond
Oleta O'Connor Yates	Philip Marshall Connelly
Oleta O'Connor Yates	Philip Marshall Connelly
Rose Chernin Kusnitz	Dorothy Rosenblum Healey
Rose Chernin Kusnitz	Dorothy Rosenblum Healey
Mary Bernadette Doyle	Ernest Otto Fox
Mary Bernadette Doyle	Ernest Otto Fox
Albert Jason Lima	William Schneiderman
Albert Jason Lima	William Schneiderman

STATE OF CALIFORNIA)
) SS:
COUNTY OF LOS ANGELES)

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, being by me first duly sworn, depose and say: that they are the Petitioners in the above entitled cause; that they have read the foregoing Petition For Writ of Habeas Corpus and know the contents thereof: and the same is true of their own knowledge, except as to the matters which are therein stated upon their information or belief, and as to those matters that they believe it to be true.

Loretta Starvus Stack

Al Richmond

Philip Marshall Connelly

Dorothy Rosenblum Healey

Ernest Otto Fox

William Schneiderman

Carl Rude Lambert

Henry Steinberg

Oleta O'Connor Yates

Rose Chernin Kusnitz

Mary Bernadette Doyle

Albert Jason Lima

Subscribed and sworn to before me

this 4th day of October , 1951

Mary L. Rosenfield
Notary Public in and for said
County and State.

My Commission Expires Jan. 15, 1955 .

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, vs. JAMES J. BOYLE, United States Marshal, Respondent.	MEMORANDUM OF LAW

STATEMENT

The petitioners were arrested on July 25, 1951 on Commissioner's warrants, charged with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671; 18 U.S.C. Sections 371, 2385. An indictment was returned against them on July 31, 1951. Since the day of their arrest, more than two months ago, these twelve men and women have been imprisoned, denied their freedom on reasonable bail.

There has never been any denial of the allegations in their petitions for release on reasonable bail as to their residence, family status, financial standing, reliability of attendance at legal proceedings, conditions of health and medical attention required. Tested by these undenied allegations, and by the factors prescribed in Rule 46 (c) of the Federal Rules of Criminal Procedure, as well as the provisions of the Constitution, these petitioners are entitled to their release on nominal bail pending the trial of the indictment returned against them. As District Judge Mathes stated in one of the proceedings before him: ".. I think $5,000 would assure the presence of any of these defendants insofar as their will to come is concerned" (transcript of

habeas corpus proceedings before Judge Mathes, August 15, 1951, p. 126).

Nevertheless, bail has been fixed for each of the petitioners in the sum of $50,000. Such an amount, on the record here, is clearly excessive and can have no other purpose than to deny petitioners their freedom on bail pending their trial under the indictment. Even the right to raise the claim that their constitutional rights have been infringed by the exaction of excessive bail has been denied by the Court of Appeals below.

The questions presented, therefore, in the proceedings before this Court raise serious constitutional questions of great public importance and affect directly the administration of justice in the federal courts over which this Court exercises a supervisory jurisdiction. In addition, a direct conflict exists between the decision of the Court below and the Court of Appeals for the Second Circuit on the issues involved.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the Constitution of the United States provides:

> "Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishment inflicted."

Federal Rules of Criminal Procedure, Rule 46, 18 U.S.C.A. provides in part as follows:

> "(a) Right to Bail.
>
> "(1) Before Conviction. A person arrested for an offense not punishable by death shall be admitted to bail. A person arrested for an offense punishable by death may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense. * * *
>
> "(c) Amount. If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commissioner or court or judge or justice will insure the

presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant.****"

I

THE DECISION BELOW IS IN CONFLICT WITH THE DECISION BY THE COURT OF APPEALS FOR THE SECOND CIRCUIT IN UNITED STATES EX REL RUBINSTEIN V. MULCAHY, 155 F.2d 1002(1946). THE WRIT OF HABEAS CORPUS HAS TRADITIONALLY ISSUED UPON A CLAIM THAT PERSONS WERE ILLEGALLY CONFINED ON EXCESSIVE BAIL.

The majority of the Court below have held in effect that one who is confined pending the trial of an indictment against him in the federal courts under excessive bail can have no resort to the writ of habeas corpus or any review of his claim that his constitutional rights have been infringed. His sole recourse is an appeal on constitutional grounds to the very court which fixed the bail in the first instance. The end result is a virtual suspension of the writ of habeas corpus (compare, Article I, Section 9, clause 2 of the Constitution) in all cases involving the claims of persons confined in jail under excessive bail. Such a ruling is contrary to the applicable decisions of this court, and does violence to the common law principles which define the use of the historic "writ of freedom" as authorized by the laws of the United States, 28 U.S.C. Section 2241.

As early as 1275, it was stated in the Statute of Westminster, (3 Edw. I, C. 15):

"And if any withhold Prisoners replevisable, after that they have offered sufficient Surety, he shall pay a grievous Americiament to the King; . . ."

Sir James Stephen, in his "History of the Criminal Law of England" (London, 1883, Vol. I, p. 234), states that "this statute was for 550 years the main foundation of the law of bail."

In 1679 the famous Habeas Corpus Act was enacted (31 Ch. II C. 2). Of this Act, Holdsworth states, in his "History of English Law", Vol. IX, pp. 118-119:

> "The success of the Act in effecting its object is illustrated by the desire of James II to get it repealed. His judges did their best to evade it by requiring prisoners, entitled to bail, to find security in such excessive sums of money that they were unable to furnish it. This abuse was the subject of one of the clauses of the Bill of Rights; and the law as thus settled by the Act and by the Bill of Rights was not altered for more than a century."

The clause of the Bill of Rights of 1689 to which Holdsworth refers is the source of the 8th Amendment to the Constitution of the United States. In re Kemmler, 136 U.S. 436, 446-447. It should also be noted that provisions similar to the provisions of the 8th Amendment to the Constitution are incorporated in the constitutions of 47 of the 48 states. Illinois is the only state which does not have such a provision in its constitution. In that state, however, excessive bail is forbidden, and may be reduced on habeas corpus. People ex rel Sammone v. Snow, 340 Ill. 464; 173 N.E. 8; 72 A.L.R. 798, 1930.

In McNally v. Hill, 293 U.S. 131, this court had occasion to define the term, habeas corpus, as it is used in the statutes authorizing the courts to issue the writ. In one of the footnotes contained in Justice Stone's opinion (written for a unanimous court), it was stated (page 137, footnote 1):

> "The Habeas Corpus Act appears from its preamble to have been especially, although not exclusively, directed at cases in which the King's subjects were detained in custody upon a criminal charge where by law they were entitled to bail. It authorized the writ to issue, directed to any sheriff or gaoler, or other person 'for any person in his or their custody.' It commanded

the production of the prisoner before the judicial officer to whom the writ was to be returned and directed that such officer 'shall discharge' the 'prisoner from his imprisonment' with provision for taking bail in his discretion, 'unless it shall appear' to him that the petitioner 'is detained upon a legal process, order or warrant out of some court that hath jurisdiction of criminal matters' or upon warrant for an offense 'for which by law the prisoner is not bailable.' 31 Car. II, Sec. II (2), Sec. III (6)(7)."

In ex parte Watkins, 3 Peters 193, this court, speaking again of the nature and uses of the writ of habeas corpus under the English Habeas Corpus Act, stated:

"English judges, being originally under the influence of the crown, neglected to issue this writ where the government entertained suspicions which could not be sustained by evidence; and the writ when issued was sometimes disregarded or evaded, and great individual oppression was suffered in consequence of delays in bringing prisoners to trial. To remedy this evil the celebrated Habeas Corpus Act of the 31st of Charles II, was enacted, for the purpose of securing the benefits for which the writ was given."

In United States v. Hamilton, 3 Dallas 17, this Court admitted a prisoner to bail on a writ of habeas corpus after the prisoner had been confined upon the warrant of a district judge in the state of Pennsylvania, charging the prisoner with the crime of treason.

In the light of the foregoing, the Court of Appeals below misconceived the nature and historic function of the writ of habeas corpus. The sole issue before the court below on habeas corpus was whether the bail fixed in criminal proceedings was excessive. If the bail was excessive, then the constitutional rights of the petitioners were violated, and the court was required to grant appropriate relief. The appropriate relief required under the law was for the court to

fix reasonable bail in the light of the undenied allegations contained in the petitions for writs of habeas corpus. Wholly apart from the rulings of the court in the criminal proceedings, the court on habeas corpus was required to examine into the question of whether or not the petitioners were illegally restrained in violation of their constitutional rights. Whenever a claim that fundamental rights guaranteed by the Constitution have been infringed has been urged before this court, this court has always held that the writ of habeas corpus is the appropriate means for testing the claim. Ex parte Royall, 117 U.S. 241; Frank v. Mangum, 237 U.S. 309; Mooney v. Holohan 294 U.S. 103; Von Moltke v. Gillies, 332 U.S. 708; Hawk v. Olson, 326 U.S. 271; see also, McNab v. United States, 318 U.S. 332.

The decision of the Court of Appeals for the Second Circuit, in United States ex rel Rubinstein v. Mulcahy, 155 Fed. 2d 1002(1946) would appear to be supported by the decisions of this court and the historic precedents which run back into the history of the Common Law in England. The decision of the court below, on the contrary, cites no support in authority, and effectively thwarts the use of the writ of habeas corpus in a type of case which historically gave birth to this famous writ.

(1930); Cooley, Constitutional Limitations (7th ed.), p. 439; Black, Constitutional Law (3rd ed.) p. 704.

In Peo. ex rel Sammone v. Snow, supra, a leading decision, the Court stated:

> "The amount of $50,000 could have no other purpose than to make it impossible for him to give the bail and to detain him in custody and is unreasonable. The constitutional right to be admitted to reasonable bail cannot be disregarded. The judge has no more right to disregard and violate the constitution than the criminal has to violate the law. It is the duty of courts to support and maintain the Constitution, and if the judges, who have taken an oath to support the Constitution openly violate it, how can they expect the courts to retain the confidence and respect of the people? A criminal may have forfeited his right to liberty, but neither courts nor any other power have the right to deprive him of it except in accordance with the law of the land."

In the light of the foregoing, it appears clear that if, as the record establishes, the amounts of bail required of petitioners are excessive, then they have been deprived of their liberty without due process of law and in violation of the express provisions of the Constitution which guarantees them their right to freedom on bail pending the trial of any indictment returned against them.

III

THE PETITIONERS WERE ENTITLED TO THEIR RELEASE ON BAIL IN REASONABLE AMOUNTS PURSUANT TO THE CRITERIA SET FORTH IN RULE 46(c) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

The provisions of Rule 46(c) of the Federal Rules of Criminal Procedure, considered in the light of the constitutional mandate, prescribe the sole factors which a court may consider in fixing bail. The factors prescribed in the Rule are the only factors which the Court may weigh and compare for the purpose of determining what amount will be sufficient -- and no more than sufficient -- to insure the presence of the accused. The amount which "will insure the presence of the defendant" is the sole object of the Rule. In determining that amount, the Court may consider (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against defendant; (3) the financial ability of the defendant to give bail; and (4) the character of the defendant. We consider these factors here seriatim.

1. The nature and circumstances of the offense charged.

So far as the nature and circumstances of the offense charged is concerned, the only source of information is the indictment itself. The petitioners are charged with conspiring to advocate and to organize a society which advocates the forcible overthrow of government. The substantive offenses are set forth in 18 U.S.C. Section 2385. The petitioners are not charged with the commission of the substantive offenses. The offense charged in an unlawful agreement to advocate in the future the proscribed doctrines. The offense is punishable under 18 U.S.C. Section 371, the general conspiracy statute. No non-verbal or physical acts are part of the offense charged in the indictment.

The Smith Act was enacted in 1940. It was the only peacetime sedition act ever enacted in the United States since the Alien and Sedition Acts of 1798. Its validity and wisdom was always in

doubt. See Chafee, Z., Freedom of Speech in the United States (N.Y. 1941). The constitutionality of the statute was not decided until June 4, 1951 by this Court in Dennis v. United States, 341 U.S. 494, 95 L. ed. Adv. 864.

It was conceded in the opinion of this Court that the application of the Statute would always be of serious concern to the Court since the law obviously impinged on freedom of speech, press and assembly protected by the Constitution. Thus, it was stated (P. 879):

> "Where there is doubt as to the intent of the defendants, the nature of their activities, or their power to bring about the evil, this Court will review the convictions with the scrupulous care demanded by our Constitution."

The decision of this Court leaves open, therefore, many important legal and constitutional questions. It has been the subject of many critical comments by the public press and civic and professional organizations. There is every reason for the petitioners to appear and vigorously prosecute their defense against the charges contained in this indictment.

So far as the seriousness of the offense is concerned, it is clear that Congress has not fixed the punishment with unusual severity. The maximum punishment which can be imposed is five years imprisonment and $10,000 fine. 18 U.S.C. Section 371.

Moreover, Congress has spoken directly on the subject of the gravity of the offense. The legislative history is significant. When Congress enacted the new Criminal Code in 1948 it eliminated any reference to the conspiracy provisions of the Smith Act. The Reviser's Notes under Section 2385 states:

> "Reference to conspiracy to commit any of the prohibited acts was omitted as covered by the general conspiracy provision, incorporated in Section 371 of this title."

It should be noted, however, that a number of other sections in the new Criminal Code retained their conspiracy provisions. The explanation for this different action by Congress is explained in

the Reviser's Notes under Section 371:

"A number of special conspiracy provisions, relating to specific offenses, which were contained in various sections incorporated in this title were omitted because adequately covered by this section. A few exceptions were made, (1) where the conspiracy would constitute the only offense, or (2) where the punishment provided in this section would not be commensurate with the gravity of the offense" (emphasis added)

Thus, Congress has decided that a maximum penalty of five years and $10,000 fine is commensurate with the gravity of the offense charged herein. It is respectfully submitted that this specific determination cannot be disregarded by the Court. For individual judges to characterize an offense as more serious and deserving of greater punishment than the legislature has ordained is to intrude the judiciary into the legislative field. There is, therefore, nothing in the "nature and circumstances" of the case herein which called for the unusual amounts of bail required of the petitioners herein.

Moreover, of all the cases now pending in the United States District Court for the Southern District of California, Central Division, where bail has been fixed, the cases herein represent by far the highest bail set in that District. In 153 cases pending in the Southern District where the penalty was five years and more (and where more than one count was involved in many indictments), the average bail fixed was less than $3,000 (See Exhibits "A" and "B" annexed to the petitions for writs of habeas corpus in the Transcripts). In only twelve cases was bail fixed at sums in excess of $10,000 and in only two cases was bail fixed in the sum of $25,000. In one of the latter cases involving mail fraud and conspiracy, the indictment was in five counts with the possible penalty of 25 years imprisonment and $50,000 fine. In the other case involving an indictment of an alien for violation of a provision of the McCarran Act, the penalty fixed by the statute was ten years, and in that case bail, originally set at

II

THE PETITIONERS WERE ENTITLED TO THEIR FREEDOM ON REASONABLE BAIL PENDING TRIAL OF THE CHARGES CONTAINED IN THE INDICTMENT UNDER THE EXPRESS PROVISIONS OF AMENDMENTS V, VI, AND VIII TO THE UNITED STATES CONSTITUTION.

It is well established that bail in criminal cases is intended to combine the administration of justice with the liberty and convenience of the persons accused. The purpose of the allowance of bail is to prevent the punishment of innocent persons as well as to secure the presence of the persons charged with crime at their trial. Bail is never required by way of punishment. The policy of the law is generally to encourage the granting of bail and even after conviction and pending appeal, bail is customarily granted whenever any substantial question of law is presented.

> "The statutes of the United States have been framed upon the theory that a person accused of crime shall not, until he has finally been adjudged guilty in the Court of last resort, be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail, not only after arrest and before trial, but after conviction pending a writ of error."
>
> Hudson v. Parker, 156 U.S. 277, 285, 39 L. ed. 424, 427.

The Judiciary Act of 1789, section 33, specifically provided that upon all arrests in criminal cases, bail should be admitted except where the punishment may be death in which case it could be granted in the discretion of the Court. A similar provision was embodied in the Revised Statutes of 1875, section 1015. The Revised Statutes later became sections 596 and 597 of old title 18 of the United States code and then finally was embodied in Rule 46 of the new Federal Rules of Criminal Procedure, 18 U.S.C.

In interpreting the constitutional and statutory provisions of law pertinent to bail, Mr. Justice Butler of the Supreme Court of

the United States sitting as Circuit Court Justice in the Circuit Court of Appeals for the Seventh Circuit in United States v. Motlow, 10 F. 2d, 657 (C.C.A. 7, 1926) stated (p. 662):

"It will be observed that the character of the crime charged or probable guilt or innocence is not suggested as having any bearing. The statement shows that trial and conviction according to law should precede punishment. It reflects the purpose of the Federal statutes and the rules of court above stated, that no one should be required to suffer imprisonment for crime before the determination of his case in the court of last resort". See also McKnight v. United States, 113 F. 451 (C.C.A. 6, 1902); Jones v. United States, 12 F. 2d, 708 (C.C.A. 4, 1926)."

Bail therefore, in the Federal Courts in non-capital cases is a matter of right before conviction. Its purpose before trial is to insure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect." United States ex rel Rubinstein v. Mulcahy, 155 F. 2d 1002, 1004 (C.C.A. 2 Circ. 1946). Bail is an important right essential to the preservation of liberty. From the viewpoint of due process of law, it guarantees to each accused, in the light of the constitutional provisions, that he shall have adequate opportunity to prepare his defense with the assistance of counsel.

Bail which is excessive in the light of the constitutional mandate and the appropriate statutory provisions is in effect a denial of bail in its entirety. Excessive bail can have no other purpose than to make it impossible for the accused to give bail and to detain him in custody. United States v. Lawrence, Fed. Cases No. 15,577 (C.C.D.C. 1835); United States v. Brawner, 7 Fed. 86 (D.C.W.D. Tenn. 1881); Adkins v. Regan, 313 Ky. 695, 233 S.W. (2) 402 (1950); Peo. ex rel Sarrone v. Snow, 340 Ill. 464, 173 N.E. 8

$25,000, was subsequently fixed at $15,000 under a superseding indictment.

Exhibit "A" annexed to the petitions in the Transcripts demonstrates also that no Court in any part of the country has fixed bail in any Smith Act prosecution subsequent to the Dennis decision in such grossly excessive amounts as has been fixed herein. Despite the pattern of requests by the Government for the fixing of bail at such sums as $100,000, $75,000 and $50,000, the records demonstrate that the bail set by the Courts has varied from sums generally fixed at $5,000 and $10,000 and, in some cases, at $20,000. It should be noted again, in this connection, that Judge Mathes stated in the proceedings before him "that $5,000 would assure the presence of any of these defendants insofar as their will to come is concerned" (Transcript of proceedings on habeas corpus, p. 126).

Moreover, even if a Court, in plain disregard of the legislative determination, should characterize an offense as most heinous in its own estimation, still this would not authorize the denial of bail or the fixing of excessive bail. In United States v. Motlow, 10 F. 2d 657 (C.C.A. 7, 1926), Mr. Justice Butler, of the Supreme Court, sitting as Circuit Justice in the Circuit Court of Appeals, stated:

> "The Eighth Amendment provides that 'excessive bail shall not be required'. This implies and therefore safeguards the right to give bail at least before trial. The purpose is to prevent the practical denial of bail by fixing the amount so unreasonably high that it cannot be given. The provision forbidding excessive bail would be futile if magistrates were left free to deny bail... Abhorrence, however great, of persistent and menacing crime will not excuse transgression in the courts of the legal rights of the worst offenders. The granting or withholding of bail is not a matter of mere grace or favor" (pp. 659, 662).

2. The weight of the evidence.

The record is barren of any evidence against the petition-

ers. Probably this factor is significant only in capital cases. Compare, Rule 46(a)(1) of the Federal Rules of Criminal Procedure. Only the indictment appears in the record herein, and an indictment is never evidence.

> "An indictment charges the defendant with action or failure to act contrary to the law's command. It does not constitute proof of the commission of the offense."
>
> Tot v. United States, 319 U.S. 463, 466, 87 L. ed. 1519, 1523

It was suggested by Judge Mathes during the arguments before him that the evidence before the grand jury which recommended bail of $75,000 and $100,000 might be considered as a factor in determining the weight of evidence. There is no authority in law for a grand jury to recommend bail. Bail is required to be set by the Court upon evidence adduced before it. The evidence, if any, presented to the grand jury by the prosecutor was legally unknown to the District Court. That evidence was untested by cross-examination or contrary proof. Its competency, relevancy or materiality was not passed upon. If the view of the District Court were sustained, the question of bail in every case would pass from the hands of the Courts into the hands of prosecutors and grand juries.

3. The financial ability to give bail.

The financial ability of the petitioners to pay anything but nominal bail is undisputed. Although the average income of all the petitioners is only about $50 per week and their other assets almost nil, bail has been set in the sum of $600,000. When it is considered that the average bail in the Southern District of California is less than $3,000, it cannot be denied that an increase over such average of 1600% without reason is grossly excessive. While bail need not necessarily be fixed at the precise amount an defendant can afford to furnish, it can hardly be denied that to fix bail in amounts which are entirely prohibitory is to simply disregard the defendant's financial ability, and lends support to the view that bail has been fixed

solely for the purpose of detention.

A number of decisions make this perfectly plain. One of the most recent is United States ex. rel. Rubinstein v. Mulcahy, 153 F. 2d 1002 (C.C.A., 2 Circ., 1946). The defendant, charged with conspiracy to evade the draft, was a resident of New York but a naturalized citizen of Portugal, a country from which he could not have been extradited had he fled there. His bail was originally set at $20,000 but the government, on a showing that he had made trips out of the jurisdiction without notice to the District Attorney's office, that he had converted some of his assets into cash, and that he had transferred some of his assets out of the country, applied to have it raised to $1,000,000. The District Court cut the government's figure in half and reset bail at $500,000. Apparently the defendant was very wealthy, for it was "not claimed that he cannot furnish bail in the amount of $500,000, but only that it will require financial arrangements unreasonably burdensome." (p. 1004) On habeas corpus, the Circuit Court of Appeals held the figure excessive.

The Rubinstein case expresses in a very condensed form the governing principles to be borne in mind: (1) that the reason for bail is "the need for a tie to the jurisdiction"; (2) that in considering the strength of the tie to be created by bail, the manifold ties to the jurisdiction which the defendant already has are to be borne in mind: his home, his family, his health, his relatives, etc.; (3) that "the past record and recent action of the accused" are to be considered, but are to be considered only "as bearing upon his good faith in appearing for trial"; (4) that the need for a tie to the jurisdiction is not to be considered as the sole question involved, nor even as the primary and over-riding consideration, but is to be fairly balanced against the equally important "right to freedom from unnecessary restraint before conviction"; (5) that there is no presumption that the defendant intends to flee, nor can any such intention be inferred merely from the ability to do so.

In United States v. Lawrence, Fed. Cas. No. 15,577, (CC,

D.C., 1835), the defendant had attempted to assassinate the President of the United States (Andrew Jackson). His attempt failed only because his gun failed to fire.

> "After inquiring as to his property and circumstances, the chief Judge said to Mr. Key, the district attorney, that he supposed bail in $1,000 would be sufficient, as it was not a penitentiary offense, there being no actual battery, and as he did not appear to have any property. Mr. Key seemed, at first, to acquiesce, but having conversed with some of the president's friends who stood around him, he suggested the idea that it was not impossible that others might be concerned who might be disposed to bail him, and let him escape to make another attempt on the life of the president, and therefore thought that a larger sum should be named. The chief judge then said that there was no evidence before him to induce a suspicion that any person was concerned in the act; that the Constitution forbade him to require excessive bail and that to require larger bail than the prisoner could give would be to require excessive bail, and to deny bail in a case clearly bailable by law." (p. 888)

In United States v. Brawner, 7 F. 86 (D.C., W.D. Tenn., 1881), bail had been set at $5,000 for a defendant charged with counterfeiting. The defendant was poor and unable to meet this amount. Citing and following the rule of the Lawrence case that "to require larger bail than the prisoner could give would be to require excessive bail," the court held this amount to be excessive and in violation of the Eighth Amendment.

See also, Barrett v. United States, 4 F. 2d, 317, 319 (C.C.A. 6, 1925); Flores and Eades v. United States, (C.C.A. 7, March 17, 1930, unreported), quoted in 5 Notre Dame Law 419 (April-May, 1930).

4. The character of the petitioners.

As to this aspect of the case, the allegations set forth

in the petitions for writs of habeas corpus remain undenied. The petitioners have lived in most of the cases all of their mature lives in California. They have families, wives, husbands, children and relatives. Some have held public office; others have been candidates for office and polled large electoral votes. A number of the petitioners are honorably discharged veterans of World War I and II. Six of them have never been arrested for any offense. The others were in almost all cases ultimately exonerated of the offenses for which they were convicted. In all these cases, they were released on nominal bail or on their own recognizance, and always attended all required proceedings with final exoneration of bail. Knowledge that arrests were pending in the case herein only found the petitioners ready and determined to meet the charges against them.

IV

RULE 46(c) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE AS CONSTRUED AND APPLIED BY THE COURT BELOW IS UNCONSTITUTIONAL AND DEPRIVES THE PETITIONERS OF THEIR LIBERTIES AS GUARANTEED BY THE FIRST, FIFTH, SIXTH AND EIGHTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CONSTITUTES A BILL OF ATTAINDER IN VIOLATION OF ARTICLE I, SECTION 9, CLAUSE 3 OF THE CONSTITUTION.

The reasoning of the Court below largely based on the views of District Judge Mathes, appears to reflect the opinion that the amounts of bail required of these petitioners was necessary in order to detain the petitioners, not to insure their presence or to grant them their liberty pending the trial of the charges made against them. Judge Mathes, for example, stated (tr. in habeas corpus proceedings, p.104):

> "As I understand the rule, Mr. Marshall, in fixing bail the court always has in mind the presumption of innocence, but considers as one of the factors that the defendants may be guilty of the charge."

The rule is explicitly to the contrary. Thus, in United States v. Motlow, 10 F. 2d 657 (C.C.A. 7, 1926), Justice Butler stressed "that the character of the crime charged or probable guilt or innocence is not suggested as having any bearing."

In D'Aquino v. United States, 180 F.2d 271 (C.C.A.9, 1950), Justice Douglas, sitting as Circuit Justice, stated (p. 272):

> "The question of the guilt or innocence of an appellant is not an issue on an application for bail."

The opinion of the Court below adopts the position of the District Court that the petitioners must be assumed (along with all other persons charged with being members or leaders of the Communist Party) to be hostages held in protective custody because other persons in another jurisdiction failed to comply with the obligations of their

bail. To use the bail process for such end results is to pervert a constitutional right into a weapon of oppression.

If the matter rested upon analogy alone, it should be noted that in the Dennis case, seven of the defendants did appear and surrender. Further, in the Dennis case bail was fixed at $5,000 after indictment and until conviction; thereafter the sum was increased to $20,000. The petitioners here have only recently been indicted; they are presumptively innocent of the charges made against them, and it is undisputed that they are prepared to appear and vigorously defend themselves.

But the matter does not rest upon analogy alone. The Court below was in effect saying that the petitioners here and the four persons in New York were in effect all members of one conspiracy and that the object of the conspiracy was to abscond. There is not a single bit of evidence in the record to support such an unwarranted holding. The only matter in the record is an indictment, and an indictment as we have heretofore noted, proves nothing. Can a conspiracy to abscond be implied? This Court has pointedly answered that question in the negative. Krulewitch v. United States, 336 U.S. 440. Justice Jackson in his concurring opinion sharply emphasized the vice of "implied conspiracies" (p. 436):

> "It is difficult to see any logical limit to the 'implied conspiracy', either as to duration or means, nor does it appear that one could overcome the implication by express and credible evidence that no such understanding existed, nor any way in which an accused against whom the presumption is once raised can terminate the imputed agency of his associates to incriminate him. Conspirators, long after the contemplated offense is complete, after perhaps they have fallen out and become enemies, may still incriminate each other by deliberately harmful, but unsworn declarations, or unintentionally by casual conversations

out of court. On the theory that the law will impute to the confederates a continuing conspiracy to defeat justice, one conceivably could be bound by another's unauthorized and unknown commission of perjury, bribery of a juror or witness, or even putting an incorrigible witness with damaging information out of the way."

District Judge Mathes made reference to the rule that bail is generally denied on capital cases because experience has shown that persons facing death have a temptation to run away. But this generalized experience of mankind founded on a law of nature is hardly a reason for concluding that persons charged with being members of the Communist Party are to be imprisoned because of an occurrence which took place in another jurisdiction 3,000 miles away. As a matter of fact, in a second Smith Act prosecution in the Southern District of New York, Judge Sylvester Ryan, a Judge of that court, on a motion to increase bail (See Exhibit A annexed to petitions in Transcripts) stated:

"I cannot in justice to these defendants charge them with the non-appearance of four other defendants . . . This Court cannot charge these defendants with being confederates or in any way having conspired or being in alliance with those not here" (Tr. in bail proceedings, p. 83).

The cogency of Judge Ryan's observations are exemplified by the injury which has been done to the petitioners here. The principle argument of the government below, both in the District Court and in the Court of Appeals, was that bail in the sum of $50,000 should be imposed because four persons had failed to appear in the Southern District of New York, after their judgments of conviction were affirmed by this Court. The government argued that the four persons, named in this indictment as co-conspirators, but not defendants, had been the subject of an "unsuccessful national survey by the Federal Bureau of Investigation, that it was "reasonable to believe" that a

"national conspiracy" exists, that somewhere there are "persons presently unindicted who would readily harbor fugitives", willing to provide "concealment of defendants" who are "unlike the usual fleeing criminal who must pay dearly for his hide-outs." It was largely upon this argument that the courts below found that this exceedingly high bail of $50,000 was not excessive.

The record, however, is absolutely devoid of any evidence of any connection between the petitioners here and the defendants in the Southern District of New York. There was not an iota of evidence to indicate in any way that the petitioners would not honor the obligations of their bond. Further, the petitioners here, on the record, are 12 men and women presumptively innocent of any charges contained in the indictment which has just recently been returned against them. Yet the government was permitted to build up a conjectural conspiracy which the petitioners could not possibly combat. The petitioners swore as to their financial abilities and their characters and willingness to defend and demonstrated the strong ties which they had to the jurisdiction. Nothing that they alleged was denied. Yet, if the viewpoint of the court below is sustained, petitioners are to be confined prior to trial on grossly excessive bail because law enforcement agencies have not apprehended four persons who forfeited their bail in New York after affirmance of their conviction, and because some "national conspiracy" to harbor and conceal petitioners has been inferred by prosecuting officials.

If the amount of bail for a defendant in a criminal case is to be determined by such factors, then the constitutional right to bail and Rule 46(c) are wastepaper, and the judiciary, so far as bail is concerned, will become merely an arm of the Executive Department, dependent upon the whims and vagaries of prosecuting officials.

If the government's views are correct, and if the sole factor before any court, regardless of what appears in the record, is the question of the four persons who failed to appear in New York, then

the government has the burden, it is respectfully submitted, to explain why the district courts of New York (Ryan, J.), Philadelphia (Kirkpatrick, J.), Baltimore (Chesnut, J.), and Hawaii (Metzger, J.), in subsequent Smith Act prosecutions, fixed bail in sums of $5,000 and $10,000, and in some cases, at $20,000. The government in all these cases argued for bail in $100,000 and $75,000, and the same arguments of an implied conspiracy to forfeit bail were advanced. Nevertheless, bail was fixed by the various district courts at far lower figures. The government, it is respectfully submitted, can make no explanation other than the fact that some judges of the courts of the United States refused to abandon their constitutional functions and applied the law of the land dispassionately.

It is fundamental in American law that guilt is individual. It is abhorrent to the rudiments of our justice to judge a man or attaint him because of his family, his creed, or his associations only. That basic principle in American law, fundamental to the democratic process, has been emphasized on many occasions. Bridges v. United States, 184 F.2d 881 (C.C.A.9,1950); Williamson v. United States, 95 L. ed. Adv. 10; Schneiderman v. United States, 320 U.S. 118; Bridges v. Wixon, 326 U.S. 135; DeJonge v. Oregon, 299 U.S. 353; Herndon v. Lowry, 301 U.S. 242; Baumgartner v. United States, 322 U.S. 665. When it is considered that a primary purpose of the historic Habeas Corpus Act was to insure that habeas corpus would reach to and liberate persons held in jail upon "suspicions which could not be sustained by evidence" (Ex Parte Watkins, 3 Peters 193, 202), it appears clear that the substitution of guilt by association for proof of personal wrongdoing converts the "Writ of Freedom" into ordinary process.

Furthor , it was stated by the District Court that it could not overlook what the Congress of the United States has said about "the Communist conspiracy" (tr. in bail proceedings, p. 26). This was undoubtedly a reference to the findings contained in Section 2 of the

Internal Security Act of 1950, commonly known as the McCarran Act.

But the District Court below was not involved in the trial of a McCarran Act violation, nor was it passing upon the constitutionality of that measure. Nor was the Court passing upon the exercise of discretion by another arm of government as in Carlson v. Landon, 187 F. 2d 991 (C.C.A.9, 1950). The petitions for writs of habeas corpus herein were directed to the judiciary who were required to exercise a legal discretion upon "facts" and "evidence" adduced in Court in order to render justice, 28 U.S.C. Section 2243. A "hearing" was required upon evidence; not reliance upon "legislative findings" in another statute whose only purpose, if any, is to cast light upon the legal meaning of that statute.

The "law of the land" requires in absolute minimum "a law which hears before it condemns." Powell v. Alabama, 287 U.S. 45, 68. Indeed, that the Constitution commands at least this much "needs nothing but statement." Riberside and Dan River Cotton Mills, Inc. v. Menefee, 237 U.S. 189, 193. As stated in Powell v. Alabama, supra, at p. 68, "It never has been doubted by this Court, or any other so far as we know", that "hearing" is a prerequisite to due process. It is so because it is required by the "inimitable principles of justice which inhere in the very idea of free government and which no member of this union may destroy." Holden v. Hardy, 169 U.S. 366, 369.

But of what avail is a "hearing" if guilt has been predetermined? If, in a proceeding in habeas corpus, the petitioners are deemed conspirators before they have been tried, if judicial notice may be taken of their guilt without any proof produced, and merely on the basis of the "findings" another arm of government, of what avail is habeas corpus or the due process clause of the Fifth Amendment to the United States Constitution?

If Rule 46(c) of the Federal Rules of Criminal Procedure relative to the amounts of bail were to be read as the Court below would read it, the enactment would become an attainder and a nullity in law.

McFarland v. American Sugar Refining Co., 241 U.S. 79, 86-87. "Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty or property." Manley v. Georgia, 279 U.S. 1, 6. See also, Morrison v. California, 291 U.S. 82; Western and Atlantic Railway Co. v. Henderson, 279 U.S. 639; Tot v. United States, 319 U.S. 463.

Legislatures enact laws, courts and courts alone try the alleged violators. Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226; Opp Cotton Mills v. Adminstrator, 312 U.S. 126, 145. It mistakes the respective functions of the two branches of government to assume that a matter "found" by one may properly be given consequences within the processes and for the purposes of the other. The character of the hearing which precedes a finding "must be adapted to the consequences that are to follow." Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294, 319.

It was not within the power of Congress to imprison these petitioners by legislative edict; yet the Court below has done that very thing upon the basis of a legislative "edict." In so doing, it has overlooked the fact that it is not within the competence of the judiciary to find persons guilty of wrongdoing upon the basis of "legislative findings." It overlooked the fact that the plain duty of the judiciary pursuant to constitutional mandate is to find its own "facts" upon proof fairly established by the prosecution.

CONCLUSION

There has been very little attempt by the Government in this case to disguise the purpose of its request for excessive bail. The pattern which is unfolding throughout the country evidences a deliberate attempt by the executive arm of government to arrest and imprison alleged members of the Communist Party and keep them in jail until they are tried and convicted. The petitioners here are admittedly poor persons and they are in no position to raise $50,000 as bail. This cannot be denied by the Government. A fair

trial is impossible under such circumstance. It is respectfully submitted that unless the federal courts afford the rudiments of due process to defendants accused of crime, the American premise of equal treatment before the law will have been completely undermined and the protection of all Americans in their fundamental liberties will be seriously endangered.

Margolis and McTernan,

By Ben Margolis

Counsel for Petitioners

Ben Margolis

and

Daniel G. Marshall,

Counsel for Petitioner Connally

Sam Rosenwein,

Of Counsel

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, Petitioners, vs. JAMES J. BOYLE, United States Marshal, Respondent.	PETITION FOR BAIL PENDING APPLICATION FOR WRIT OF CERTIORARI TO UNITED STATES SUPREME COURT

TO THE HONORABLE WILLIAM O. DOUGLAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES:

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, the petitioners above named hereby petition this honorable Court for an order directing their release from the custody of the respondent upon bail in such reasonable sum as may be determined by this Court pending an application for writ of certiorari to the United States Supreme Court from a determination of the Court of Appeals for the Ninth Circuit affirming an order of the District Court denying petitions for writs of habeas corpus filed by petitioners herein, and final determination thereon; and in support thereof, your petitioners allege as follows:

I

On July 25, 1951, Howard V. Calverley, a United States Commissioner in the Southern District of California, issued

separate warrants for the arrests of petitioners pursuant to complaints signed by agents of the Federal Bureau of Investigation charging each of the petitioners with conspiracy to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671; 18 U.S.C. Sections 371, 2385.

II

Early on the morning of July 26, 1951, the F.B.I. agents proceeded to arrest petitioners. Seven were arrested in San Francisco. Their names are Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Al Richmond, Ernest Otto Fox, Loretta Starvus Stack and Mary Bernadette Doyle. Four were arrested in Los Angeles on the same day; their names are Dorothy Rosenblum Healey, Philip Marshall Connelly, Rose Chernin Kusnitz and Henry Steinberg. One was arrested in New York; his name is William Schneiderman.

III

In Los Angeles the persons arrested were arraigned before the United States Commissioner on July 26, 1951. The United States Attorney informed the Commissioner that a grand jury would be convened on August 1, 1951 and that it would take some time for the said grand jury to consider the evidence. His estimate was at first three weeks, later reduced to two. At the Government's request, bail was fixed by the Commissioner in the sum of $75,000 for each person pending the preliminary examination set for August 9, 1951. Since none of the persons arrested in Los Angeles were financially able to furnish the bail fixed by the Commissioner, each was confined in the County Jail of the County of Los Angeles in the custody of the United States Marshal, the respondent herein.

IV

In San Francisco, the seven persons arrested were brought on July 26, 1951 before a United States Commissioner in the Northern District of California. The Government requested that bail be denied. This the Commissioner declined to do. The Government then

requested bail in the sum of $75,000 for each person. The Commissioner acceded to that request except in the cases of Mary Bernadette Doyle and Loretta Starvus Stack where bail was fixed in the sum of $2,500, and in the case of Oleta O'Connor Yates, at $7,500. The last three persons furnished bail and were released from custody. The others were unable to furnish bail and were confined in the County Jail of the City and County of San Francisco in the custody of the acting United States Marshal for the Northern District of California.

V

On the next day, July 27, 1951, the persons in San Francisco who were in custody with bail fixed at $75,000 moved in the United States District Court for the Northern District of California for a reduction in bail; at the same time, the United States Attorney moved in the same Court for an increase in bail for the three persons who had been released on bail in accordance with the order of the United States Commissioner. These motions came on for hearing before the Honorable Louis E. Goodman, a Judge of the United States District Court for the Northern District of California. The said District Judge, ruling that the narrow question before him was the amount of bail which should be fixed pending removal of the arrested persons to the Southern District of California where the complaints had originally issued, fixed bail in the sum of $50,000 for the seven individuals. As a result, the three persons who had originally been released were confined along with the four others in the County Jail in the custody of the acting United States Marshal.

VI

On July 28, 1951, each of these seven individuals filed a petition for writ of habeas corpus to the said Honorable Louis E. Goodman maintaining that they were illegally confined and praying for their release on reasonable bail. The said petitions were

denied on July 28, 1951, the District Court adhering to its ruling of the previous day.

VII

In New York, William Schneiderman was held in $100,000 bail by the United States Commissioner pending removal proceedings, which bail was later reduced on August 7, 1951, by Honorable Edward J. Dimock, a Judge of the United States District Court for the Southern District of New York to $50,000.

VIII

In Los Angeles, on July 27, 1951, petitions for writs of habeas corpus for the four persons there arrested were filed in the United States District Court for the Southern District of California, Central Division. Orders to show cause why the petitions should not be granted were issued by the Honorable Leon R. Yankwich, a Judge of the said District Court, and made returnable on July 31, 1951 at 10 A.M.

IX

When counsel for the four petitioners appeared in the courtroom of the aforesaid District Judge on July 31, 1951 at 10 A.M., the Court was informed by the United States Attorney that an indictment had been returned by the grand jury that morning charging the twelve persons above named with conspiracy to violate Section 2 of the Smith Act, 54 Stat. 671; 18 U.S.C. sections 371, 2385. In view of the return of the indictment on July 31, the said Honorable Leon R. Yankwich was compelled to hold that the habeas corpus proceedings had become moot and the orders to show cause why the petitions for writs of habeas corpus should not be granted were thereupon discharged.

X

On the said July 31, 1951, and immediately after the aforementioned proceedings were terminated, the four Los Angeles petitioners were brought before the Honorable James M. Carter, a

Judge of the United States District Court for the Southern District of California, Central Division, before whom the indictment had been returned. At the outset, an oral motion was made to disqualify the said Judge upon the grounds of personal bias and prejudice against the said petitioners and in favor of the adverse party. The said oral motion was denied and petitioners advised the Court that they would file a formal affidavit of bias and prejudice. Thereupon, the Court announced that it was fixing bail in an amount recommended by the grand jury. A notation upon a copy of the indictment indicated the sum of $75,000 next to the names of all defendants except the defendant William Schneiderman, where the notation was $100,000. These notations were unsigned.

XI

On August 1, 1951, the seven petitioners in San Francisco were removed from the County Jail therein and brought to the County of Los Angeles and confined in the County Jail of the County of Los Angeles together with the four Los Angeles petitioners, all in the custody of the United States Marshal, the respondent herein. On the next day, August 2, 1951, the seven were brought before the said Judge James M. Carter and arraigned. At the time of the arraignment, no reference was made to bail and all the said petitioners continued confined in the County Jail.

XII

On August 6, 1951, all of the petitioners except William Schneiderman moved in the United States District Court to fix bail in a reasonable sum or if bail had been fixed in the sum of $75,000 as aforesaid, then for a reduction of this excessive bail to a reasonable amount. Under the rules of the Court this motion was required to come before the said Judge James M. Carter.

XIII

Before the argument on the motion to fix or reduce bail commenced, the aforesaid petitioners except William Schneiderman

jointly filed an affidavit of personal bias and prejudice pursuant to the provisions of 28 U.S.C. Section 144, and requested the said Judge James M. Carter to disqualify himself and to proceed no further with respect to the bail proceedings. The said Judge on August 7, 1951 declined to disqualify himself and held the affidavit of bias and prejudice legally insufficient.

XIV

In the case of one of the petitioners, Philip Marshall Connelly, a request was thereupon made that the Court stay its ruling on the motion to fix or reduce bail until the question of the Court's disqualification could be tested by appropriate appellate proceedings. This request was granted and the Court took the said Connelly motion under submission but withheld a ruling pending determination by the Court of Appeals for the Ninth Circuit.

XV

In the case of the other petitioners except William Schneiderman, the motion to fix or reduce bail was thereupon argued before the said Judge James M. Carter and on August 8, 1951, the said Judge James M. Carter fixed bail for all the said petitioners in the sum of $50,000 except the petitioners Oleta O'Connor Yates and Loretta Starvus Stack where bail was fixed in the sum of $25,000. Since all of the petitioners were wholly unable to furnish bail in the amounts fixed as aforesaid, they remained confined in the County Jail of Los Angeles in the custody of the respondent.

XVI

On August 13, 1951, the aforesaid petitioners filed separate petitions for writs of habeas corpus claiming that they were illegally detained because the bail fixed by the said Judge James M. Carter was excessive and praying for their release on reasonable bail. The writs were issued and made returnable before Honorable William C. Mathes, a Judge of the United States District Court for the Southern District of California, on August 15, 1951,

and after hearing, the said Judge Mathes by orders dated August 17, 1951, dismissed the aforesaid petitions and discharged the writs. Notices of Appeal from the aforesaid orders were filed on August 18, 1951.

XVII

In New York, the petitioner, William Schneiderman, who had not contested the removal proceeding, was on August 14, 1951 removed from New York to Los Angeles where he arrived on August 17, 1951. The said petitioner was on that day arraigned before Judge James M. Carter, and remanded to the custody of the respondent herein. No reference was made to bail at the time of arraignment.

XVIII

On August 24, 1951, the Court of Appeals for the Ninth Circuit rendered its decision on the application of the petitioner Philip Marshall Connelly, to disqualify the aforesaid Judge James M. Carter and held that the aforesaid affidavit of bias and prejudice was legally sufficient and ordered the said Judge to proceed no further respecting the said petitioner's bail proceedings or in connection with his prosecution under the indictment. Connelly v. The United States District Court, etc., No. 13,053, August 24, 1951. A copy of the opinion will be submitted to the Court on the filing of this petition.

XIX

In view of the decision of the Court of Appeals for the Ninth Circuit on the sufficiency of the joint affidavit of bias and prejudice, a serious question was created as to the power or jurisdiction originally of the said Judge James M. Carter to fix or reduce bail for the other petitioners herein who jointly signed the affidavit of bias and prejudice. In order to remove this question from the bail proceedings on appeal the petitioners decided to withdraw their appeals. On August 27, 1951, counsel for the respective parties stipulated in writing to dismiss the appeals.

The said stipulation was filed with the Clerk of the Court of Appeals for the Ninth Circuit in accordance with Rule 16 of the said Court, and thereafter, upon the said stipulation, the mandates of the Court issued dismissing the appeals.

XX

Thereupon, and on August 29, 1951, all of the petitioners herein were brought before Judge James M. Carter and the said Judge formally disqualified himself from any further proceedings in the cause. On the same day, the Chief Judge of the District Court, Honorable Paul J. McCormick, assigned the cause to the aforesaid Honorable William C. Mathes.

XXI

On August 29, 1951, all of the petitioners appeared before the Honorable William C. Mathes. In view of the disqualification of the aforesaid Judge James M. Carter, Judge Mathes ruled that he would entertain a renewal of the motion to fix or reduce bail on behalf of all the petitioners except petitioners Connelly and Schneiderman, and as to the said two petitioners, would hear the aforesaid motion in the first instance on their behalf.

XXII

After hearing, and on August 30, 1951, the said Judge William C. Mathes fixed bail for each of the petitioners in the amount of $50,000.

XXIII

On September 4, 1951, each of the petitioners filed their petitions for writs of habeas corpus claiming that their detention was illegal and arbitrary; that the bail fixed was so excessive and so unreasonable as to constitute a denial of their right to bail under the Constitution and laws of the United States; and a deprivation of their right to properly defend themselves against the charges laid in the indictment in accordance with due process of law.

XXIV

After return and hearing held on September 6, 1951, before the Honorable Ben Harrison, a Judge of the United States District Court for the Southern District of California, the said petitions, treated as a joint petition upon the stipulation of the respective parties, were denied on September 12, 1951 and the orders to show cause why the petitions should not be granted discharged.

XXV

On September 12, 1951, the petitioners appealed to the Court of Appeals for the Ninth Circuit from the order denying their petitions for writs of habeas corpus and discharging the aforesaid orders to show cause, and said appeal came on for argument before the said Court on September 20, 1951, and the said order of the District Court was thereafter affirmed by the said Court of Appeals for the Ninth Circuit by a divided Court. A copy of the opinion of the said Court will be submitted to this Court with the petition herein.

XXVI

The transcripts of the records on appeal before the Court of Appeals for the Ninth Circuit for each of the petitioners herein (identical except as to variations resulting from the statements made concerning their individual backgrounds) will be submitted to this Court with the petition herein. The said transcripts of the records on appeal (named hereafter as "The Transcripts") will be referred to in the petition herein and are incorporated in this petition by reference and made a part hereof as if fully set forth at length. The transcripts show that only questions of law are involved in these proceedings; there have been no controverted issues of fact. The principal basis for the rulings of the lower courts herein was the failure of four persons to appear in the Southern District of New York after their judgments of conviction were affirmed by this Court in Dennis, et al v. United States, although these petitioners in Los Angeles have not been shown to have any connection, directly or indirectly, with the aforesaid persons.

XXVII

The petitioners have resided in California for 30 years (Healey); 9 years (Stack); 44 years (Lima); 37 years (Kusnitz); 21 years (Lambert); 15 years (Steinberg); 41 years (Yates); 6 years (Fox); 46 years (Doyle); 13 years (Richmond); 39 years (Connelly); 16 years (Schneiderman). A more detailed statement relative to the residences of petitioners is contained in their individual petitions set forth in the Transcripts.

XXVIII

All of the petitioners are citizens of the United States except petitioner Fox who was brought to this country at the age of four and has been for the past fifteen years married to a citizen of the United States.

XXIX

The family relationships of petitioners are as follows: Healey -- married, son, age 8, mother, age 66, one brother and two sisters; Stack -- maried, son, age 8 and daughter, age 3, elder child chronically ill; Lima -- married, three children, ages 8, 2 and 2 months; Kusnitz -- married, daughter, age 11; Lambert -- married; Steinberg -- married, four daughters, ages 4, 9, 9, 11, mother, age 65 and one sister; Yates -- married; Fox -- married; Doyle -- unmarried; Richmond -- married, two minor children; Connelly -- married, daughter; Schneiderman -- married, daughter, age 7.

XXX

The financial ability of the petitioners is as follows: Healey -- $50 per week, husband a co-defendant, no assets except automobile; Stack -- between $40 and $45 per week; husband $60 to $65 per week, no assets except small commercial bank account and automobile; Lima -- $60 per week, no assets except automobile; Kusnitz -- $30 per week and $25 expenses, husband approximately $550 per month, own home, paid $12,000, mortgage about $8,000,

about $500 in bank; Lambert -- $50 per week, wife $40 per week, no other assets except lot worth $750; Steinberg -- $58.50 per week, no assets except home and automobile; Yates -- $40 per week owns home, purchase price $4,000, no other assets except automobi and $500 in bank; Fox -- $40 per week, wife, $60 to $65 per week; Doyle -- $47 per week, no other assets; Richmond -- $50 per week, purchasing home he lives in; Connelly -- $50 per week, no other assets; Schneiderman -- $50 per week and expenses, no other asset

XXXI

The character of the petitioners is reflected in the following: Six of the petitioners (Richmond, Doyle, Yates, Lambe Kusnitz and Stack) have no previous criminal record of any kind. There is a deportation proceeding pending against Fox. Steinberg was charged with civil and criminal contempt in 1948 and convicte but his conviction was reversed by the Court of Appeals for the Ninth Circuit. He also was charged with violation of a County Registration Ordinance, but upon motion to dismiss the complaint against him, the Ordinance was held unconstitutional and he was released. Lima was arrested once in 1935 for picketing activitie but his trial resulted in a jury disagreement and the charges wer dismissed on motion of the prosecutor. Healey was arrested for picketing activities in 1934. Her conviction for civil and crimi contempt, in 1949 as in the case of Steinberg, was reversed by th Court of Appeals for the Ninth Circuit. Petitioners Lambert, Richmond, Lima and Steinberg served in the military forces of the United States during World War I or World War II and all have honorable discharges from the armed services. Petitioners Yates, Doyle, Healey and Steinberg have either held public office in the State of California or been candidates for public office in the State. A more detailed statement relative to the character of petitioners is contained in their individual petitions set forth in the Transcripts.

XXXII

The conditions of health and medical attention required by petitioners are as follows: Petitioner Lambert is prone to tuberculosis and suffers from migraine headaches and is under the regular care of a physician for that malady. Petitioner Healey suffers from a similar condition. Petitioner Doyle suffers from a pituitary tumor which has required abdominal surgery and deep x-ray therapy. She was recently advised of the existence of a uterine tumor, and has suffered a heart attack and bronchial disorders from these serious organic conditions. Petitioner Yates has a heart condition diagnosed as excessive palpitation, requires regular treatment with medication and use of pheno-barbitol, has suffered a collapse of the left side of her lung, and has arthritis in the fingers of one hand and in her knee. Petitioner Stack has a thyroid deficiency, a uterine tumor which requires immediate surgical treatment, and suffers from chronic attacks of tonsilitis. Petitioner Connelly suffers from multiple glandular deficiency and hypertensive heart disease. He is in need of special diet, and frequent medical observation of his blood pressure and fast heart. A more detailed statement of the health conditions of the petitioners is contained in each of their petitions as set forth in the Transcripts.

XXXIII

Petitioners hereby state and represent to this Court that they intend in good faith to remain and that they will remain within the jurisdiction of this Court at all times throughout the prosecution of the proceedings under the indictment and that they do not intend to and will not at any time during such proceedings leave the jurisdiction of this Court without the approval of the Court. Petitioners believe that they are not guilty of the offense charged in the indictment and they intend to vigorously prosecute their defense. Petitioners believe that upon the trial of this

indictment herein, they will be entitled to a verdict of not guilty and that a conviction upon the allegations thereof would deprive them of liberties secured to them by the Constitution of the United States.

XXXIV

Petitioners further aver that when they have on prior occasions been involved in legal proceedings as aforesaid, they have been released on bail, or on their own recognizance (Healey, Steinberg and Fox), and even after conviction and on appeal have always attended all proceedings whenever required. The petitioner Healey was sentenced to 18 months imprisonment after her conviction for contempt as aforesaid and yet was released on bail in the sum of only $500 pending appeal, which bail was finally exonerated after the conviction was reversed on appeal as aforesaid.

XXXV

Prior to the arrests herein as aforesaid, the public press had openly reported that Smith Act prosecutions were contemplated soon in various parts of the country including California. Some of the petitioners had been followed by agents of the Federal Bureau of Investigation, had been aware that arrests were pending, but they had made no attempt to leave the area, to avoid detection or to avoid arrest and had at all times intended to be present and defend themselves in any trial which might eventuate. Details of the aforesaid are contained in the petitions set forth in the Transcripts.

XXXVI

The onerous limitations which are placed upon petitioners in preparing for trial while confined under the excessive bail fixed herein are set forth in the concluding paragraphs of each of the petitions contained in the Transcripts. The wide scope of of the trial under the indictment will include the examination of programs, policies, and ideas embodied in hundreds of books,

publications, newspapers and periodicals, the examination of files, records and libraries, the preparation of scores of witnesses, conferences with attorneys and witnesses, the examination and analysis of the record in United States v. Dennis including some 600 exhibits, and other multifold tasks required as a result of broad charges contained in this conspiracy indictment. Even if released on reasonable bail, the problems that the petitioners will encounter in preparing for trial on the date set by the District Court will be almost insuperable.

XXXVII

Your petitioners are wholly unable to furnish bail in the sum of $50,000 and by virtue thereof all the proceedings heretofore had therein which have confined your petitioners in the County Jail have unlawfully deprived petitioners of liberty and abridged the rights guaranteed petitioners by the Fifth and Eighth Amendments to the Constitution of the United States. Exhibits A and B annexed to the petitions contained in the Transcripts and made a part hereof clearly reveal that petitioners have been denied equal justice by the action of the District Court in fixing bail at the grossly excessive sum of $50,000.

XXXVIII

Petitioners are advised by counsel that under the Constitution petitioners are entitled to bail as a matter of right and that the requirement of excessive bail is a denial of bail. Your petitioners are entitled to freely prepare a defense, to consult with counsel and witnesses, and all of this is denied by the unlawful confinement herein.

XXXIX

In view of the facts and circumstances hereinabove set forth, petitioners respectfully submit to the Court that petitioners are at the present time unlawfully imprisoned and restrained of their

liberty; that petitioners' imprisonment and detention are illegal, arbitrary and a denial of rights secured to petitioners by the Constitution of the United States and that bail in the sum of $50,000 for each petitioner is so excessive and so unreasonable as to constitute an absolute denial of petitioners' rights to bail and petitioners' rights as a matter of due process of law to properly defend themselves against the charges which have been brought against them.

XL

Your petitioners intend to immediately file an application for writ of certiorari with the United States Supreme Court from the determination of the Court of Appeals for the Ninth Circuit affirming the order of the District Court denying the petitions for writs of habeas corpus. Your petitioners are advised by counsel that on the said application for writ of certiorari the said counsel will urge on petitioners' behalf that the Court of Appeals for the Ninth Circuit has decided an important question of federal law which has not been, but should be, settled by the United States Supreme Court, has decided a federal question in a way probably in conflict with applicable decisions of this Court, has so far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure by a lower court, as to call for an exercise of the United States Supreme Court's power of supervision. Your petitioners are further advised by counsel that the failure to grant their release on reasonable bail under the circumstances herein raises substantial questions of law which justify the granting of reasonable bail pending the application for writ of certiorar

XLI

So far as the petition herein refers to the personal background and circumstances of the individual petitioners, the petition is verified by each of the petitioners solely with respect to those matters which relate to each of said petitioners. In all

other respects, this petition is verified jointly by all petitioners in their joint behalf.

WHEREFORE, petitioners pray this Honorable Court for an order directing their release from the custody of the respondent in such reasonable sum as may be determined by this Court pending the application for writ of certiorari to the United States Supreme Court from the determination of the Court of Appeals for the Ninth Circuit affirming the order of the District Court denying petitions for writs of habeas corpus filed by petitioners herein, and final determination thereon.

DATED: This _____ day of October, 1951.

Loretta Starvus Stack

Al Richmond

Philip Marshall Connelly

Dorothy Rosenblum Healey

Ernest Otto Fox

William Schneiderman

Carl Rude Lambert

Henry Steinberg

Oleta O'Connor Yates

Rose Chernin Kushnitz

Mary Bernadette Doyle

Albert Jason Lima

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

LORETTA STARVUS STACK, AL RICHMOND, PHILIP MARSHALL CONNELLY, DOROTHY ROSENBLUM HEALEY, ERNEST OTTO FOX, WILLIAM SCHNEIDERMAN, CARL RUDE LAMBERT, HENRY STEINBERG, OLETA O'CONNOR YATES, ROSE CHERNIN KUSNITZ, MARY BERNADETTE DOYLE and ALBERT JASON LIMA, being by me first duly sworn, depose and say: that they are the petitioners in the above entitled cause; that they have read the foregoing Petition For Bail Pending Application For Writ of Certiorari and know the contents thereof: and that the same is true of their own knowledge, except as to the matters which are therein stated upon their information or belief, and as to those matters that they believe it to be true.

Loretta Starvus Stack

Al Richmond

Philip Marshall Connelly

Dorothy Rosenblum Healey

Ernest Otto Fox

William Schneiderman

Carl Rude Lambert

Henry Steinberg

Oleta O'Connor Yates

Rose Chernin Kusnitz

Mary Bernadette Doyle

Albert Jason Lima

Subscribed and sworn to before me this 4th day of October, 1951.

Mary L. Rosenfield
Notary Public in and for said County and State.

My Commission Expires Jan. 14, 1955.